

Dated the

day of

20

**DUBLIN CITY COUNCIL**  
(DCC)

AND

**[INSERT]**  
(Developer)

**AGREEMENT**

Development of Residential Lands

at Emmet Road, Dublin 8

**Beauchamps Solicitors**  
**Riverside Two**  
**Sir John Rogerson's Quay**  
**Dublin 2**

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THIS AGREEMENT made the \_\_\_\_\_ day of \_\_\_\_\_, 20

**BETWEEN:**

(1) **DUBLIN CITY COUNCIL** of Civic Offices, Wood Quay, Dublin 8 (hereinafter called "**DCC**");

AND

(2) **[INSERT NAME]** (Company Number **[INSERT]**) having its registered office at **[INSERT]** (hereinafter called "the **Developer**");

(each a "**Party**" and together the "**Parties**").

**BACKGROUND**

- (A) DCC intends to directly procure the design and construction of the Emmet Road Project, of which the Development forms part. DCC is the freehold owner of the Development Site.
- (B) DCC wishes to procure, as part of the Emmet Road Project, the design and construction of a sustainable mixed-use development of an apartment block with ground floor commercial / retail space known as Block C within the Development Site, in accordance with the Plans.
- (C) DCC conducted the Procurement in accordance with the competitive procedure with negotiation pursuant to EU Directive 2014/24/EU as implemented in Ireland by the European Union (Award of Public Authority Contracts) Regulations 2016 (S.I. No. 284 of 2016) the OJEU reference for which was **[INSERT]**. The Developer has been identified as the preferred tenderer as a result of the Procurement and has agreed to enter into this Agreement, as provided for in the Procurement.
- (D) The Developer shall carry out the Development on the Development Site in accordance with the Plans, the Building Regulations, the Planning Permission and the Developer's Timetable and shall thereafter take an Assurance of the completed Developer Units within the Development Site.
- (E) DCC has agreed with the Developer, for the DCC Consideration hereinafter appearing and in consideration of the observance of and performance by the Developer of the covenants and conditions hereinafter set forth, to permit the Developer to enter upon and take possession of the Development Site for the periods hereinafter set out and for the purpose only of carrying out the Development in accordance with the Plans, the Building Regulations, the Planning Permission and the Developer's Timetable and to grant assurances of completed Developer Units within the Development Site (excluding the sites for Residential Units) to the Developer on Practical Completion in accordance with this Development Agreement.

**NOW THIS AGREEMENT WITNESSES** that in consideration of the payment of the DCC Consideration, DCC and the Developer **HEREBY AGREE** as follows:-

**1. Definitions and Interpretation**

In this Agreement the following expressions shall where the context so admits have the following meanings:-

**"AF1"** means Approved Form (AF 1) containing particulars to be notified by the Construction Contractor to the Health and Safety Authority before the design process begins in accordance with Safety Regulations;

**“AF2”** means Approved Form (AF 2) containing particulars to be notified by Project Supervisor Construction Stage to the Health and Safety Authority before the construction work begins in accordance with Safety Regulations;

**“Ancillary Certificate”** means a certificate as prescribed by the Building Control Regulations, other than a statutory certificate of compliance as prescribed in the 2014 Regulations given by a Competent Person to confirm compliance of elements of the building, design or Works with Building Regulations;

**“Ancillary Certifier”** means a person proposed, approved or appointed by the Developer to issue an Ancillary Certificate;

**“Assigned Certifier”** means the person or entity assigned by the Developer to certify compliance with the relevant requirements for the Development under the Building Control Regulations provided always such person or entity shall at all times be independent of the Developer and the Builder and have no conflict of interest in acting as assigned certifier in relation to the Development;

**“Assurance”** means each Deed of Assurance of (i) the Common Areas to the Management Company, (ii) the freehold-equivalent interest of a Developer Unit to the Developer, and (iii) the freehold-equivalent interest of a Residential Unit to DCC, substantially in the form of the draft deeds of assurance annexed to this Agreement as Appendix 9 the final agreed form of which is subject to the prior written approval of DCC, such approval not to be unreasonably withheld or delayed;

**“Beneficiaries”** means each of the HFA and the Management Company;

**“Builder”** has the meaning assigned to it in clause 2 of the Code of Practice. The Construction Contractor will be the Builder for the purposes of this Agreement;

**“Building Contract”** means the building contract(s) to be entered into by the Developer with the Construction Contractor(s) in relation to the Development, being in the RIAI standard form construction contract with a schedule of amendments, substantially in the format annexed at Appendix 7;<sup>1</sup>

**“Building Control Regulations”** means the Building Control Regulations 1997-2024 and any amendments thereto.

**“Building Regulations”** means the Building Control Act 1990 and any and all subordinate legislation pursuant thereto (including but not limited to the Building Regulations 1997-2025 and the Building Control Regulations), as may be amended, extended or modified from time to time;

**“Certificate of Compliance on Completion”** means the certificates to be signed by the Construction Contractor and the Assigned Certifier at Practical Completion in the form set out in the sixth schedule to the 2014 Regulations;

**“Code of Practice”** means the Code of Practice for Inspecting and Certifying Building Works issued by the Department of Environment, Community and Local Government in February 2014 as amended from time to time;

**“Collateral Warranties”** means the collateral warranties from the Developer, Construction Contractor, any Sub-Contractors, and the Design Team, in favour of DCC and the Beneficiaries, in the format contained in Appendices 11, 12 and 13 or in such other form as may be required by the Beneficiaries;

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<sup>1</sup> Developer to provide proposed form for approval by DCC  
12117569.14

**“Common Areas Transfer”** means the transfer of common areas within the Development and any external common areas (if any) within the Development to a Management Company in accordance with the MUD Act;

**"Completion Standard for the Development"** means the standard to which the Development shall be completed by the Developer in accordance with the Plans including all the Developer's Units, the Residential Units, the Common Areas, external areas including footpaths being the standard specified in Appendix 2 Part 1;<sup>2</sup>

**"Completion Standard for the Developer's Units"** means the standard to which the Developer's Units shall be completed in accordance with the Plans as specified in Appendix 2 Part 2;

**"Completion Standard for the Residential Units"** means the standard to which the Residential Units shall be completed in accordance with the Plans as specified in Appendix 2 Part 3;

**"Connection Charges"** means any costs and fees levied by Uisce Éireann and ESB Networks for the connection of the Units to Uisce Éireann's water and wastewater network, and to a domestic or commercial electricity supply for the Residential Units or Developer Units, as applicable;

**"Construction Contractor"** means the Developer or such other reputable building contractor or building contractors as may from time to time be nominated in writing by the Developer for the carrying out of the Development or parts thereof and approved in writing in advance by DCC;

**"DCC's Representative"** means the person or entity appointed by DCC to discharge this role under this Agreement or such other person as DCC may from time to time nominate;

**“DCC Consideration”** means the Fixed Residential Development Construction Costs, payable in accordance with Clause 8 of this Agreement;

**“Defects Liability Period”** means the periods of 12 months commencing on the next Working Day after the day on which the Certificate of Practical Completion issues;

**“Design Certifier”** means the person or entity assigned by the Developer to issue statutory certificates of compliance as prescribed by the Building Control Regulations;

**"Design Team"** means the Developer's Architect, the Developer's Landscape Architect, the Developer's Civil and Structural Engineer, the Developer's Fire Consultant, the Developer's Mechanical and Electrical Engineer, the Developer's Quantity Surveyor and the Design Certifier;<sup>3</sup>

**“Design Team Appointment”** means the terms and conditions of appointment and scope of services of each members of the Design Team, more particularly contained in Appendix 15;

**"Developer's Architect"** means [INSERT], or such person or persons as may be appointed, with the prior written approval of DCC, by the Developer as its Architect;

**"Developer's Civil and Structural Engineer"** means [INSERT] or such person or persons as may be appointed, with the prior written approval of DCC by the Developer as its Civil and Structural Engineer;

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<sup>2</sup> As per plans and specifications uploaded with the tender

<sup>3</sup> Exact list to be confirmed with preferred tenderer

**"Developer's Design"** means all designs produced by or on behalf of the Developer for the Works and which are to be submitted to DCC for DCC's review in accordance with Clause 5.4

**"Developer's Fire Consultant"** means [INSERT] or such person or persons as may be appointed by the Developer as its Fire Consultant, with the prior written approval of DCC;

**"Developer's Landscape Architect"** means [INSERT] or such person or persons as may be appointed by the Developer, with the prior written approval of DCC, as its Landscape Architect;

**"Developer's Mechanical and Electrical Engineer"** means [INSERT] or such person or persons as may be appointed by the Developer, with the prior written approval of DCC, as its Mechanical and Electrical Engineer;

**"Developer's Quantity Surveyor"** means [INSERT] or such person or persons as may be appointed by the Developer, with the prior written approval of DCC, as its Quantity Surveyor;

**"Developer's Timetable"** means the dates for the pre-construction phase(s), commencement and completion of the Development, as set out in Appendix 3;

**"Developer Units"** means the commercial units to be constructed in the locations labelled Retail / Cafe / Supermarket (for identification purposes) on Map [2] and Map [3] in Appendix 5 by the Developer in accordance with this Agreement to the Completion Standard for the Developer Units and **"Developer Unit"** shall be construed accordingly;

**"Development"** means Block C of the Emmet Road Project, as described in the Planning Permission, to comprise 91 number apartments (10 number studio apartments, 29 number one-bedroom apartments, 43 number two-bedroom apartments and 9 number three-bedroom apartments – including 5 number duplex apartments fronting onto internal street), communal open space at third floor level, supermarket (including off-licence) of circa 2,476 square metres GFA (circa 1,765 square metres net retail sales area) at first floor level, with ground floor café/restaurant (circa 205 square metres), 5 number units (retail/café/restaurant/class 2 financial services floorspace 564 square metres);

**"Development Bond"** means the development bond to be provided by the Developer to DCC prior to commencement of the Development, in the form of the bond annexed hereto at Appendix 4 or such other form as DCC may in its discretion approve;

**"Developer's Tender"** means the final tender delivered by the Developer as part of the Procurement;

**"Development Site"** means the parts of the lands comprised in Folios DN244645F, DN13667F, and DN219062F all situate at Emmet Road, Dublin 8 shown for identification purposes only as outlined in red on Map 1 in Appendix 5;

**"Disability Access Certificate"** means such disability access certificates as may be required in respect of the Works;

**"Emmet Road Project"** means the design and construction of the Emmet Road development comprising 578 residential units, a library/community hub, childcare facility, supermarket, five retail units, 2 café/restaurant units, open space and all associated works in accordance with the Planning Permission;

**"Environmental Laws"** means all laws (whether criminal, civil or administrative) including common law, statutes, regulations, statutory instruments, directives, bye-laws, orders, codes and

judgements, having the force of law in Ireland concerning environmental matters and protection of the environment;

**"Expert"** means a person appointed in accordance with Clause 25 to resolve a matter under the Agreement.

**"Fire Safety Certificate"** means such fire safety certificates as may be required in respect of the Works;

**"Fixed Residential Development Construction Costs"** means the sum of €[INSERT] ([insert in words] euro) (excluding VAT) payable by DCC for the construction of the Residential Units, as further detailed in Appendix 19;

**"Force Majeure"** means war, civil commotion, strike, lock-out, labour dispute, shortage of labour and materials, serious inclement weather loss or damage by fire or other such risks or any other cause beyond the reasonable control of the Developer, which is not caused or contributed to by the act or default of the Developer, and which the Developer could not reasonably have provided against before entering into this Agreement;

**"Health & Safety Plan"** means the health & safety plan prepared by the Developer in respect of the Works in accordance with this Agreement;

**"HFA"** means the Housing Finance Agency plc;

**"Independent Architect"** means such independent architect as may be agreed between the Developer and DCC or failing agreement between the parties within five Working Days (on the application of either party) the person nominated by the President or acting President for the time being of The Royal Institute of the Architects of Ireland;

**"Information to Submit Final Tenders" or "ISFT"** means the invitation to Submit Final Tenders document issued by DCC as part of the tender for the award of this Agreement;

**"Interest Rate"** means the interest rate specified from time to time by the Prompt Payment of Accounts Act, 1997 as amended by the European Communities (Late Payment in Commercial Transactions) Regulations 2012 (S.I. 580 of 2012);

**"LDI Policy"** means the latent defects insurance policy for the Works to be provided by [SCOR/Homebond] substantially in the form in Appendix 14, which policy shall be in place for not less than 12 years and which shall be assigned to DCC on completion of the transfer of the ownership of the Residential Units to DCC.

**"Management Company"** means such owners' management company (being a company limited by guarantee) incorporated by the Developer to take the Common Areas Transfer and to manage, inter alia, the common parts of the Development in accordance with the provisions of the MUD Act and the interplay of the Development as situate within the Emmet Road Project;

**"Map"** means the map of the Development Site annexed to this Agreement at Appendix 5;

**"MUD Act"** means the Multi-Unit Development Act, 2011 and any statutory modification or re-enactment thereof for the time being in force;

**"Opinion on Compliance"** means the certificate or opinion on compliance with planning permission and Building Regulations in respect of the Works in the current RIAI form as of the date of Practical Completion;

**"Plans"** mean the plans, specifications, elevations, schedule of finishes and drawings for the Development prepared and approved by DCC in accordance with this Agreement and as further described in Appendix 1;

**"Planning Acts"** means the Local Government (Planning and Development) Acts 1963-1999, the Planning and Development Act 2000 and any statutory modification or re-enactment thereof for the time being in force and any regulations or orders made thereunder;

**"Planning Application"** means the planning application made by or to be made by the Developer in respect of the Development in accordance with this Agreement;

**"Planning Permission"** means the grant of full planning permission under reference number ABP-314791-22, for the construction of the Development on foot of the Planning Application granted by An Bord Pleanála, or any amended planning permission which is applied for and granted to the Developer in accordance with Clause 2 of this Agreement;

**"Possession Date"** means the date or dates on which DCC permits the Developer to enter on the Development Site (or parts thereof) pursuant to Clause 2 hereof;

**"Practical Completion"** means that, in the opinion of DCC's Representative, acting reasonably, the Works are capable of being taken over and used for their intended purpose and have reached the stage at which:

- (i) each of the Completion Standard for the Development, the Completion Standard for the Developer Units, and the Completion Standard for the Residential Units has been achieved in accordance with this Agreement excluding minor defects and/or omissions which will not, whether individually or cumulatively, prevent the Works from being taken over and used for their intended purpose; and
- (ii) the Developer has in conjunction with the Assigned Certifier executed the Certificate of Compliance on Completion and the relevant particulars of the said Certificate have been included on the register maintained by the Building Control Authority and the Contractor has delivered all other certificates required under this Agreement; and
- (iii) the Developer has delivered to DCC:
  - (a) all Collateral Warranties required pursuant to the provisions of this Agreement;
  - (b) as-built drawings in respect of the Works;
  - (c) the Safety File, operation and maintenance manuals;
  - (d) product guarantees for those items forming part of the Works; and
- (iv) the Works have been cleared of any builder's debris and all plant, tools, equipment and surplus materials and goods belonging to or placed there by the Construction Contractor or his sub-contractors (except where the Construction Contract otherwise requires those items to remain on the Development Site on or after the date of Practical Completion); and
- (v) Practical Completion has been achieved under the Building Contract;

and **"Date of Practical Completion"** and **"Certificate of Practical Completion"** shall be construed accordingly;

**"Procurement"** means the procurement process conducted by DCC for the award of this Agreement;

**“Project Supervisor Construction Stage”** means the Construction Contractor such other person as shall be appointed, with the prior consent of DCC, by the Developer as the Project Supervisor Construction Stage in respect of the Development pursuant to the Safety Regulations in the form of appointment at Appendix 8;

**“Project Supervisor Design Process”** means **[INSERT]** or such other person as may be appointed, with the prior consent of DCC, by the Developer as Project Supervisor Design Process in respect of the Development pursuant to the Safety Regulations in the form of the appointment at Appendix 8;

**“RCT”** means Relevant Contracts Tax as provided for in Chapter 2, Part 18, of the Taxes Consolidation Act, 1997;

**“Requisite Consents”** means those permissions, consents, approvals, licenses, certificates and permits in legally effectual form as may be necessary lawfully to commence, carry out, maintain and complete the Works including (but without limitation):

- (1) the Planning Permission;
- (2) Building Regulations;
- (3) Fire Safety Certificate(s);
- (4) consents under the Safety Regulations;
- (5) Environmental Laws;
- (6) the requirements of all competent authorities regulating the Works and/or the use of the Development Site; and
- (7) the Planning Acts;

**“Residential Units”** means the 91 Units of the Development comprising:

- (a) 10 x studio apartments,
- (b) 29 x one-bedroom apartments,
- (c) 43 x two-bedroom apartments; and
- (d) 9 x three-bedroom apartments (including 5 number duplex apartments fronting onto internal street)

more specifically detailed in the ISFT all to be constructed in accordance with this Agreement and to the Completion Standard for the Residential Units, **SUBJECT** to any changes to the number and type of Residential Units required by the Planning Permission and **“Residential Unit”** shall be construed accordingly;

**“Safety Regulations”** means the Safety, Health and Welfare at Work Act, 2005 and any and all subordinate legislation pursuant thereto (including but not limited to the Safety, Health and Welfare at Work (Construction) Regulations 2013), as may be amended, extended, or modified from time to time;

**“Site Licence”** means a bare licence to be granted by DCC to the Developer for the Development in accordance with clause 2.1 of this Agreement, substantially in the form of the licence at Appendix 18;

**“Specimen Unit”** means each of a 2 bed unit and a studio unit constructed by the Developer to act as a quality benchmark and reference point for all Residential Units and to define agreed quality standards expected in the construction of the Residential Units and quality of the materials inside the Residential Units including but not limited to finishes (flooring, wall tiles, painting), kitchen and built units, sanitary ware and ironmongery;

**"Sub-Contract"** means any sub-contract entered into by the Developer or the Construction Contractor for design services or for the construction of a substantial part of the Works;

**"Sub-Contractors"** means those sub-contractors providing design services or constructing a substantial part of the Works appointed by the Construction Contractor and the Developer for the carrying out of the Works;

**"Technical Due Diligence Team"** means [INSERT] or such other persons as may be appointed from DCC from time to time as notified to the Developer;

**"Term"** means, unless this Agreement is terminated pursuant to the terms hereof, the period of [insert months] commencing on the date of this Agreement **SUBJECT** to the right of DCC to extend the Term, as provided for in Clause 4.4;

**"Units"** mean the Developer Units and Residential Units collectively and **"Unit"** shall be construed accordingly;

**"Variation"** means a variation to the Works proposed by DCC pursuant to Clause 5 and processed in accordance with the Variation Management Procedure;

**"Variation Management Procedure"** means the procedure in respect of Variations as set out in Appendix 20;

**"VAT"** means Value Added Tax;

**"VAT Act"** means the Value-Added Tax Consolidation Act 2010 and related VAT regulations;

**"Working Day"** means any day that is not a Saturday, Sunday, a bank holiday or a public holiday in Ireland;

**"Works"** means the works to be carried out by Developer in relation to the design, construction and completion of the Development as detailed in the Plans;

**"2014 Regulations"** means the Building Control (Amendment) Regulations 2014 as may be amended, extended or modified from time to time;

**"2016 Regulations"** means the European Union (Award of Public Authority Contracts) Regulations 2016, as may be amended, extended or modified from time to time;

## **Interpretation**

In this Agreement unless the context otherwise admits or requires:

- (a) Clause and clause headings are inserted for convenience only and shall not affect the construction of this Agreement.
- (b) All references to Clauses, clauses, sub-clauses, paragraphs, sub-paragraphs, Schedules or Appendices are references to Clauses, clauses, sub-clauses, paragraphs, sub-paragraphs, Schedules or Appendices in this Agreement.
- (c) Any reference in a clause or a paragraph to a sub-clause or a sub-paragraph is a reference to a sub-clause or a sub-paragraph of the clause or paragraph in which the reference is contained unless it appears from the context that a reference to some other provision is intended.

- (d) Words denoting the singular include the plural and vice versa.
- (e) References to persons include references to bodies corporate and unincorporated and vice versa.
- (f) References to the masculine gender include the feminine and neuter genders and vice versa.
- (g) References to any prescribed forms or conditions of any Institute or Professional Body referred to in this Agreement include references to such prescribed forms or conditions as may exist from time to time.
- (h) References to "this Agreement" include this Agreement as supplemented, amended, modified or varied from time to time.
- (i) The Appendices are to be read and construed as if they formed part of the body of this Agreement and the term "this Agreement" is to be interpreted as including the Schedules hereto.
- (j) References to any society, institute or other professional body include any other body established from time to time in succession to or in substitution of or for or carrying out the function formerly carried on by such society, institute or other professional body.
- (k) References to a "week" mean a calendar week.
- (l) References to a "month" mean a calendar month.
- (m) All approvals, consents, confirmations of satisfaction, agreements, certificates and notifications required pursuant to this Agreement shall be in writing. Where any approval, consent, confirmation of satisfaction or any action of a similar nature is provided for in this Agreement to be given or withheld by a Party save where expressly provided otherwise it shall not be unreasonably withheld or refused (but may be given subject to reasonable conditions) and shall be so given or withheld within such reasonable time as may be stipulated in the application for such approval or action, being not less than 10 (ten) days from date of presentation and request for such approval or action, failing which such approval, consent, configuration or satisfaction shall be deemed to have been given. Any provision hereof relating to time limits for approvals or disapprovals (or similar actions) shall apply equally to re-presentation or re-requests for approval following any refusal.
- (n) Where two or more persons comprise any party to this Agreement, references to that party shall include both or all of them and they shall be jointly and severally liable hereunder.
- (o) Reference to any statute, order or regulation shall be deemed to include any modification or re-enactment thereof for the time being in force and reference to any statute shall also be deemed to include any regulations or orders made thereunder.
- (p) Any rights conferred on DCC to have access to or to enter upon the Development Site shall be construed as extending to all persons authorised by DCC (acting reasonably) including agents, professional advisors, contractors and others.
- (q) If any term or provision of this Agreement is held to be illegal or unenforceable in whole or in part such term shall be deemed not to form part of this Agreement but the enforceability of the remainder of this Agreement shall not be affected.

- (r) The terms of the ISFT and the Developer's Tender shall to the extent not already reflected in this Agreement be deemed to form part of this Agreement, and where any conflicts exists between the terms of this Agreement and the terms of the ISFT and the Developer's Tender the order of priority on interpretation shall be as follows:-
- (i) this Agreement;
  - (ii) the Developer's Tender; and
  - (iii) the ISFT.

## 2. Rights of Entry

- 2.1 Subject to compliance by the Developer with the access requirements specified in Clause 2.4 below, DCC shall permit the Developer to enter on to the Development Site, on foot of the Site Licence to enable the Developer carry out the Development in accordance with the Plans, the Developer's Timetable, the Building Regulations and the Planning Permission.
- 2.2 The Site Licence will be for the duration of the Term and the Site Licence will be renewed by DCC for further 3 (three) month periods (or such other period to be determined by DCC) provided the Developer is in compliance with all the Developer's obligations contained in the Site Licence.
- 2.3 The Developer shall not be permitted to have access to the Development Site or any part thereof for the purposes of commencing the Works until DCC is furnished with and confirms in writing that it is satisfied it has been provided with the following documents:
- (a) a certified copy of the executed Construction Contract including all appendices thereto;
  - (b) the Development Bond or Development Bonds, duly executed, for the Works;
  - (c) Certified copy appointment/s of the Project Supervisor Design Process;
  - (d) Certified copy appointment/s of the Project Supervisor Construction Stage;
  - (e) Certified copy appointment/s of the Design Certifier;
  - (f) Certified copy appointment/s of the Assigned Certifier;
  - (g) Certified copy appointment of each member of the Design Team;
  - (h) Certified copy email/s of notice/s of validation confirming submission of the commencement notice/s for the Works in accordance with the Building Control Regulations;
  - (i) Copy Fire Safety Certificate(s) for the Works, or copy of the Seven Day Notice, as applicable under the Building Regulations;
  - (j) Copy Disability Access Certificate(s) for the Works;
  - (k) All insurances as required pursuant to Clause 12;
  - (l) The Health & Safety Plan;

- (m) Certified copies of the Forms AF1 and AF2 duly completed and lodged with the Health and Safety Authority;
- (n) Evidence of registration of the LDI Policy;
- (o) Confirmation that all pre-commencement planning conditions have been approved; and
- (p) Copy of the Construction Environmental Management Plan with EIAR mitigation measures.

2.4 Notwithstanding that part of the Development Site may be subject to a Site Licence granted pursuant to Clause 2.1 above, during the course of the carrying out of the Development, DCC, its authorised officials, employees, agents or contractors shall be entitled to enter upon the Development Site at all reasonable times to view the state and progress of the Development and to inspect and test the materials and the workmanship on the Development Site. DCC shall appoint the Technical Due Diligence Team for the purposes of monitoring quality control, statutory compliance of construction, and snagging before Practical Completion. The Technical Due Diligence Team shall act as an inspector under the direction of DCC's Representative and are not empowered to issue instructions or interfere with the progress of the Works. The Developer shall afford the Technical Due Diligence Team and/or procure that the Technical Due Diligence Team are afforded every facility for the performance of that duty. The Developer shall be informed of the appointment of the Technical Due Diligence Team (or any replacement Technical Due Diligence Team appointed by DCC during the Term). The Technical Due Diligence Team shall be paid by DCC.

2.5 For the avoidance of doubt the Development Site shall remain in the ownership and control of DCC unless and until a Site Licence has been granted by DCC to the Developer in accordance with Clause 2.1 above.

2.6 The Developer shall provide DCC on or before commencement of the performance of any works the subject of this Agreement the name, contact details and legal representatives of all Sub-Contractors involved in the Development, insofar as is known at that time and shall promptly notify DCC in writing of (i) any changes in the information during the course of this Agreement; and (ii) the name, contact details and legal representatives of any additional Sub-Contractors involved in the Development.

### **3. Developer's Contracts and Collateral Agreements**

3.1 The Developer shall retain the Construction Contractor, Design Team and such other professional advisors and contractors at its own cost and expense as shall be necessary to carry out the Development. In particular, but without prejudice to the generality of the foregoing, the Developer shall retain the Construction Contractor and those members of the Design Team who have been identified by the Developer and assessed as part of the Procurement. The Developer shall ensure that the appointment of each member of the Design Team shall be substantially in the form of the Design Team Appointment and that the contract with the Construction Contractor shall be substantially in the form of the Building Contract.

3.2 The Developer shall appoint the Design Certifier and the Assigned Certifier in accordance with the provisions of the Construction Regulations and shall procure that they shall each

execute an agreement with respect to his or her appointment in the form set out in Appendix 10 and shall provide DCC with a certified copy of the appointments.

- 3.3 The Developer shall appoint the Project Supervisor Design Process in accordance with the provisions of the Construction Regulations and shall procure that the Project Supervisor Design Process shall execute an agreement with respect to its appointment as Project Supervisor Design Process in the form set out in Appendix 8 and shall provide DCC with a certified copy of the appointment.
- 3.4 The Developer shall appoint the Construction Contractor as Project Supervisor Construction Stage in accordance with the provisions of the Construction Regulations and shall procure that the Construction Contractor shall execute an agreement with respect to its appointment as Project Supervisor Construction Stage in the form set out in Appendix 8.
- 3.5 The Developer shall:
- (a) within five (5) Working Days after the execution of a Building Contract deliver to DCC a certified copy of the duly executed Building Contract and procure that there is executed and delivered to DCC the Collateral Warranty from the Construction Contractor;
  - (b) within five (5) Working Days after the execution of the Design Team Appointments (but in any event not later than is provided for in Clause 2.6 above) deliver to DCC certified copies of the duly executed Design Team Appointments and procure that there is executed and delivered to DCC Collateral Warranties from the following:
    - 3.5.b.1 each member of the Design Team
    - 3.5.b.2 the Project Supervisor for Design Process;
    - 3.5.b.3 the Assigned Certifier and
    - 3.5.b.4 the Design Certifier;
  - (c) within five (5) Working Days after the execution of each Sub-Contract deliver to DCC certified copies of the agreed form, duly executed Sub-Contract and procure that there is executed and delivered to DCC Collateral Warranties from each Sub-Contractor in the form of the specimen attached in Appendix 13.
- 3.6 Not permit any change of the Construction Contractor or member of the Design Team without the prior written consent of DCC and in accordance with the 2016 Regulations. Approval must be sought from DCC by providing full details of any proposed replacement/alternative contractor or Design Team member. In the case of the Construction Contractor or a Design Team member pre-qualified during the Procurement, the Developer must complete the relevant PQQ questions in respect of the proposed replacement member and the score awarded must be equal to or higher than that attained by the Construction Contractor or member of the Design Team being replaced. DCC will act promptly in determining any consent application.
- 3.7 The intellectual property rights (including copyright) in any plans, drawings, reports, specifications, calculations and other documents (the “**Design Information**”) produced by or on behalf of the Developer, in connection with the Works shall remain vested in the Developer but the Developer shall grant to DCC and shall procure that the Design Team

members and Sub-Contractors grant to DCC, free of charge, an irrevocable, non-exclusive and transferable licence (carrying the right to grant sub-licences) to reproduce, copy and use the Design Information (and all amendments and additions thereto), whether in existence or to be made, for all purposes connected with the Works (including without limitation and generality thereof, the design, construction, alteration, reconstruction and completion of the Works). The Developer shall ensure that Design Information created, brought into existence or acquired during the Term of this Agreement vests, and remain vested throughout the Term of this Agreement, in the Developer and the Developer shall enter into appropriate agreements with any third parties that may create or bring into existence, or from which it may acquire, any Design Information rights.

#### **4. Obligation to Develop**

- 4.1 The Development shall be carried out in accordance with the following conditions:-
- 4.2 The Developer shall at its own expense do all works in connection with the preparation of the Development Site for the Development and shall take down and remove all work and materials (if any) which shall be unsound or unfit for the purposes of the Development.
- 4.3 The Developer shall, acting at all times in accordance with this Agreement, at its own expense prepare the Development Site for building purposes and shall complete the Development in conformity in every respect with the Plans (as varied only with the written consent of DCC) and in full compliance with the Requisite Consents and with the provisions of this Agreement.
- 4.4 The Developer shall construct and complete the Development and shall ensure that the Development proceeds in a regular manner, in accordance with the Health And Safety Plan without delay or interruption and shall take such steps as may be necessary to ensure the carrying out and completion of the Development in accordance with the Developer's Timetable and in accordance with the Planning Permission and Building Regulations and to the Completion Standard for the Development, the Completion Standard for the Developer Units, the Completion Standard for the Residential Units, and within the Term subject to any extensions granted under Clause 27.
- 4.5 The Developer shall procure that the Development is carried out and completed in a good and workmanlike manner in accordance with good building practice with the materials specified or otherwise with suitable materials of a comparable quality and substantially in accordance with:-
  - (a) the Plans;
  - (b) the Requisite Consents; and
  - (c) all Acts of Oireachtas and Regulations made thereunder or deriving validity therefrom and the regulations and enforceable codes of practice of any authority (including all reasonable requirements of the Fire Authority insofar as it is necessary to incorporate such requirements in the Development).
  - (d) The Developer shall ensure there shall not be used on or in connection with the Works any materials and/or substances the use of which would be contrary to the Plans and applicable current Irish Standards and codes of practice (including all permissions, consents, approvals, licences, certificates and permits as may

be necessary, to lawfully commence, carry out and complete the Works) and/or which would be known to be reasonably suspected to be: -

- (e) deleterious either by themselves or when used in conjunction with any other materials or in any particular situation or location;
- (f) likely to cause damage to the Works;
- (g) a potential hazard to health and safety;
- (h) capable of posing a threat to the stability, integrity or performance of the Works or any part of the Works; and
- (i) capable of reducing the normal life expectancy of the Works or any part of the Works.

4.6 During the course of the Development all services including water, sewerage, electricity (including signalling, electrical and telecommunications equipment) on the Development Site and/or on DCC's adjoining lands and of which the Developer shall be notified or become aware shall be maintained so that any interruption to those services caused by the carrying out of the Development of the Development Site shall be remedied forthwith by the Developer at its own expense.

4.7 The Developer shall, during the course of the Development, at its cost procure the connection of all services on the Development Site with DCC's lands adjoining or adjacent to the Development Site. DCC shall give the Developer reasonable notice of any requirements it may have with regard to connections for adjoining sites.

4.8 The Developer shall not use the Development Site prior to Practical Completion for any purpose other than the carrying out of the Development. Without prejudice to the generality of the forgoing, the Developer shall not erect or construct any buildings on the Development Site save in conformity with the Plans, the Building Regulations and the Planning Permission PROVIDED ALWAYS that if the Developer should at any time wish to depart in any way from the approved Development it may not do so without first obtaining the prior consent in writing of DCC and complying with all requirements under the Planning Acts which affect or relate to the Development or the user thereof. DCC may in its absolute discretion withhold such consent if it considers that the departure would materially depart from the approved Development.

4.9 The Developer shall register the LDI Policy in respect of the Residential Units and the Developer Units and enter into appropriate agreements to procure the provision of certificates confirming the LDI Policy is in place for completion.

4.10 The Developer shall pay and shall indemnify DCC against liability in respect of any fees or charges payable under any Acts of the Oireachtas or any regulation of any local authority in respect of the Development, (including any financial contributions payable under any amendment to the Planning Permission and any Connection Charges).

4.11 The Developer shall comply with all applicable obligations in the field of environmental, social and labour laws in accordance with Regulation 18 (4) (a) of the 2016 Regulations.

4.12 The Developer shall construct the Specimen Unit in accordance with the Developer's Timetable and shall make access to the Specimen Unit available to DCC at the earliest date practical as a benchmark for quality for roll-out of the Residential Units. For the avoidance of doubt, the Specimen Unit is to be constructed to the Completion Standard for the

Residential Units and will act as a quality benchmark and reference point for all Residential Units and shall define agreed quality standards expected in the construction of the Residential Units and quality of the materials inside and outside the Residential Units including but not limited to finishes (flooring, wall tiles, painting), kitchen and built units, sanitary ware and ironmongery.

- 4.13 The Developer shall not sell or dispose of any earth, clay, gravel or sand from the Development Site except so far as shall be necessary for the completion of the Development.
- 4.14 The Developer shall not use or deposit on or in connection with the Development any materials or substances which are not in full compliance with the Building Regulations.
- 4.15 The Developer shall not at any time allow or cause to be allowed any trespass upon or interference with the adjoining lands of DCC.
- 4.16 The Developer shall take all such reasonable precautions as shall be necessary to avoid nuisance, annoyance, inconvenience, injury, loss, danger to or interference with the public or any owners or occupiers of adjoining or neighbouring property (including DCC) or to any other persons.
- 4.17 The Developer shall submit to DCC monthly reports, at a time and in a format agreed with DCC which shall include:
  - (a) the Contractor's monthly progress report on the overall Development and the progress of the Works including any issues which are or may cause delay to the Works;
  - (b) details of the numbers employed in connection with the Works on the Development Site distinguished by profession and trade including the numbers required by the Social Employment Clause at Clause 20 hereafter;
  - (c) a Health and Safety report; and
  - (d) the Assigned Certifier's report for the preceding month.
  - (e) If in the reasonable opinion of DCC's Representative the Works are not being constructed or completed in accordance with the terms of this Agreement, then DCC's Representative shall be entitled to notify Developer's Representative in writing and give details of any such deviation. If Developer's Representative does not within ten Working Days of the date of such notification notify DCC's Representative in writing of proposals reasonably acceptable to DCC to remedy and/or make good any such deviation or if the Developer's Architect disputes the reasonable option of DCC's Representative, then either of the parties shall be entitled to refer the determination of the matter to the Expert who shall give his decision within seven Working Days from the date of the matter being referred to him.

## **5. Design**

- 5.1 Without prejudice to any other obligations of the Developer under this Agreement, the Developer shall carry out and procure the completion of the design of the Works:

- (a) using the standard of skill, care and diligence to be expected of a design and build developer experienced in carrying out design and construction work of a similar nature, scope and complexity as the Works; and
- (b) such that, when constructed in accordance with any design prepared for the purpose of this Agreement, the Works when complete shall comply with all relevant requirements of this Agreement.

5.2 The Developer agrees and acknowledges that:

- (a) the Developer will be responsible for all aspects of design and design development, the selection of goods and materials and the satisfaction of any performance specifications in relation to the Works and for the accuracy and sufficiency of the Plans notwithstanding:
- (b) that any design in respect of the Works has been carried out by or on behalf of:
  - (i) DCC (including in respect of any preliminary design included with the Plans and any other document forming part of this Agreement);
  - (ii) the Design Team, any Key Sub-Contractors and/or any other professional consultants (whether or not same had previously been engaged by DCC);
  - (iii) any other person (whether engaged by the Developer, DCC or any other person);
- (c) any receipt or review of, or comment or direction by DCC on any design submitted to DCC by the Developer;
- (d) any Variation to the Works;

and none of the above shall diminish or derogate from in any way or to any degree any duty, obligation or liability of the Developer under this Agreement;

5.3 DCC will not be:

- (a) responsible for any error, inaccuracy, incompleteness, inadequacy or omission of any kind in any document forming part of this Agreement or in any other data or information provided to the Developer by DCC;
- (b) deemed to have given any representation of accuracy, completeness or adequacy in respect of the Plans or any other document forming part of this Agreement or in any other data or information provided to the Developer by DCC;
- (c) liable to the Developer:
  - (i) in respect of any receipt, review, comment, approval, acceptance (or deemed or inferred approval or acceptance) of any design or other document submitted to it by the Developer (including by reason that non-compliant design was comprised in such submittal but not identified);
  - (ii) for failure to review, comment upon, approve, certify or accept any design or other document submitted to it by the Developer, including any failure to detect, comment upon or notify the Developer of, any errors, omissions or

non-compliance with the requirements of the Agreement contained in such design or document.

#### 5.4 Design Review

- (a) The Developer shall, without charge to DCC, provide copies of all designs prepared in relation to the Works (but, for the avoidance of doubt, excluding any such design identified with the Plans as having been approved by DCC) on or before the date which is 10 (ten) Working Days prior to the date on which the Developer is to commence procurement or construction work in relation to the relevant element of the Works.
- (b) All design submitted to DCC pursuant to Clause (a) shall include a certificate from each relevant designer to the effect that the design comprised in the submission is compliant with all relevant requirements of the Agreement.
- (c) Without prejudice to any other rights DCC may have in respect of defective or non-compliant works or services under the Agreement, DCC may, within 10 (ten) Working Days of receipt of any Developer's Design:
  - (i) reject the design where it is not in accordance with the Agreement or if the relevant element of the Works, when constructed in accordance with that design, will be non-compliant with the Agreement (giving particulars of any identified non-compliances);
  - (ii) otherwise provide comment on the design; or
  - (iii) confirm it has no comment on the submitted design;by notice in writing to the Developer (and any Developer Design which is not rejected by DCC pursuant to Clause (i) above shall be referred to as "**Accepted Developer Design**").
- (d) Where DCC:
  - (iv) rejects any Developer's Design in accordance with Clause 1.1.1(a)(i), the Developer shall rectify the non-compliant design and reissue the design to DCC for further review (in which event the earlier provisions of this Clause 5.4 shall reapply) before the Developer commences procurement and/or construction in respect of the affected element of the Works;
  - (v) makes comment on any Developer's Design in accordance with Clause 1.1.1(a)(ii), the Developer shall, at its own cost, take DCC's comment into account (to the extent required to ensure compliance with the Agreement including, without limitation, to ensure compliance with the Planning Permission and the Building Regulations) in proceeding with any necessary procurement and/or the execution of the Works; or
  - (vi) issues no notice in accordance with Clause 5.4(c) within 10 (ten) Working Days of the submission to it of any Developer's Design, without prejudice to Clause 5.3 or any rights DCC may have in respect of Defects, DCC shall be deemed to have confirmed that it has no comment on the design (and such design shall be deemed to be Accepted Developer's Design for the purposes of this Agreement).

- (e) The Developer shall not commence the construction of any Works pursuant to any Design until the date the earlier of:
  - (i) the date of issue of a notice by DCC confirming that:
    - (A) it has comments on the design but does not reject it; or
    - (B) it has no comment on that design; and
  - (ii) the date on which DCC is deemed to have confirmed that it has no comment on the design;

in each case in accordance with the provisions of Clause 5.4 and thereafter shall carry out (or procure the carrying out of) the Works in accordance with all Accepted Developer Design.
- (f) Where DCC has wrongfully rejected any Developer's Design pursuant to its review under this Clause 5.4, the Developer shall be entitled to make application for an appropriate extension of time, such application to be made in accordance with and subject to Clause 27.
- (g) The Developer shall:
  - (i) give DCC at least 5 (five) Working Days' notice of any design review meetings with the Design Team which are scheduled to discuss:
    - (A) any design which DCC has rejected or commented on under Clause 5.4 above;
    - (B) the discussion of the results of any technical due diligence carried out in respect of any Developer's Design reviewed by DCC;
    - (C) design in respect of any elements of the Works which DCC has at any time identified to the Developer (by notice in writing) as being of interest to DCC;
  - (ii) allow DCC representative(s) to attend all such meetings; and
  - (iii) take due regard of any comments made by DCC representative(s) at those meetings.

5.5 Any dispute in relation to whether any Developer Design is compliant with the Agreement may be referred to the Independent Architect (and such dispute shall be conducted in accordance with the provisions of Clause 25).

## 6. Variations

6.1 DCC shall be entitled to propose a Variation to the Works, and in relation to any such proposed Variation, the Parties shall comply with the Variation Management Procedure. If a dispute exists between the Developer and DCC in respect of any matter required for approval by either Party, under the Variation Management Procedure, then such dispute

or difference shall be referred to the relevant Expert for determination in accordance with Clause 25, as indicated in the Variation Management Procedure.

- 6.2 Notwithstanding any other provision of this Agreement, if any proposed Variation is implemented, and such Variation has not arisen as a result of the acts or omission or default of the Developer, then the DCC Consideration shall increase by the amount which is agreed by the Parties pursuant to the Variation Management Procedure.

## **7. Defects Liability**

- 7.1 The Developer will enforce the defects liability provisions in the Building Contract which shall be for the Defects Liability Period and shall use all reasonable endeavours to ensure that all defects, shrinkages and other faults notified during the Defects Liability Period are made good as soon as possible to the satisfaction of DCC's Representative.

### **7.2**

- (a) Subject to sub-clause (d), any defects, shrinkage or other faults concerning the which appear before the expiration of the Defects Liability Period which in the opinion of DCC's Representative are due to materials or workmanship not in accordance with this Agreement or the Plans shall, within five (5) Working Days or such other reasonable period (as DCC's Representative may nominate) after receipt of written instructions from DCC's Representative, be made good by the Developer and (unless DCC's Representative shall otherwise decide) at the cost of the Developer.
- (b) DCC shall inspect the Development on or about 10 months after the date of Practical Completion and shall deliver to the Developer a list of any snagging items disclosed by the DCC inspection. The Developer shall attend to the rectification of the matters identified in the snagging list as soon as practicable, both before and after the expiration of any 12 months' defects period provided for in the Construction Contract.
- (c) Notwithstanding the foregoing, DCC's Representative may issue such written instructions from time to time during the Defects Liability Period and in any event shall issue a final list of defects, not later than twenty (20) working days after the expiration of the Defects Liability Period. Completion of such outstanding items and remedying such defects shall be proceeded with expeditiously by the Developer and shall be finished and rectified within a reasonable time (but in any event no later than three months) after the date of receipt by the Developer of DCC's Representative final list of defects, notwithstanding that the Defects Liability Period may have expired.
- (d) The following defects and/ or losses shall be excluded from the Developer's liability pursuant to this sub-clause 7.2:

7.2.d.1 hair cracks in plaster work;

7.2.d.2 defects or damage in paint work or decoration;

7.2.d.3 normal shrinkage or expansion of timber;

- 7.2.d.4 defects in plaster work or damage occurring in the Works by reason of the operation of any central heating system;
  - 7.2.d.5 damage or defects caused by negligence or abuse on the part of DCC, its servants, agents, licensees or invitees; or
  - 7.2.d.6 damage or defects caused by fair wear and tear.
- 7.3 Any disputes concerning whether or not a particular item is a defect or whether the defect has been properly remedied in accordance with this Agreement may be referred to the Independent Architect for decision in accordance with the provisions of Clause 25 of this Agreement.
- 7.4 Without prejudice to any other right or remedy of DCC, the Developer will diligently, from the Possession Date to the end of the Defects Liability Period prosecute claims for the benefit of DCC and the Developer and seek redress for the consequences of failure on the part of the Construction Contractor, the Design Team or any Sub-Contractor to observe and perform their respective obligations under the Building Contract or any of the Design Team Appointments or any Sub-Contract, as applicable.

## 8. Payment by DCC

- 8.1 Subject to the Developer having a current and valid tax clearance certificate at the due date for payment on each of the payment dates hereunder, DCC shall pay the Developer the DCC Consideration on a monthly basis as follows:
- (a) On the [25<sup>th</sup>]<sup>4</sup> of each month (each such date a "**payment claim date**") the Developer may issue to DCC's Representative an interim payment claim (each an "**Interim Payment Application**") for payment of such part of DCC's Consideration as is applicable to the value of Works completed under the Agreement up to the date of the Interim Payment Application, to be assessed by reference to the quantum of DCC's Consideration, less any amounts to be retained by DCC in accordance with this Agreement.
  - (b) DCC's Representative will have 5 (five) Working Days from the date of receipt of the Interim Payment Application to undertake any inspections and/or to liaise with the Developer and/or the Developer's Architect to agree a reasonable valuation in respect of the Interim Payment Application. Whether or not agreement is reached as to the Developer's entitlements in respect of the relevant Interim Payment Application, on or before the expiry of the 5 (five) Working Days period from the date of receipt of the Interim Payment Application by DCC's Representative, DCC shall procure that on its behalf DCC's Representative issues a written recommendation (the "**Recommendation**") for payment in respect of the amounts claimed with the relevant Interim Payment Application. Each Recommendation shall state:
    - 8.1.b.1 a reasonable recommendation as to the appropriate valuation of the amount due to the Developer in respect of the relevant Interim Payment Application; and

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- 8.1.b.2 the reasons for any difference between the quantum of the Recommendation as against the valuation of the Works contained in the Interim Payment Application.
- (c) On or after the date of issue of the Recommendation, the Developer shall issue invoice which shall reflect the amount specified in the Recommendation.
- (d) DCC shall make payment to the Developer of the amount specified in the Recommendation within 15 (fifteen) Working Days of the date of issue by the Developer of the relevant invoice.
- 8.2 The amounts payable by DCC in accordance with the foregoing provisions shall in no circumstances exceed the 80% of the Fixed Residential Development Construction Costs.
- 8.3 Within fifteen (15) Working Days of the date of Practical Completion of the Residential Units, DCC shall pay the balance of the Fixed Residential Development Construction Costs payable (other than Retention related amounts required to be retained) subject to delivery to DCC of the items listed in Clause 13 for each such Unit and the issue to DCC of an invoice for the amount of the balance.
- 8.4 The Developer's entitlement to any particular monthly payment shall be conditional upon the Developer having furnished to DCC:
- (a) the Collateral Warranties in accordance with Clause 3.5 (provided that in respect of Sub-Contractors, the necessary Collateral Warranties need only be furnished where those parties have been engaged at the time a payment is to be made);
- (b) written evidence satisfactory to DCC that the Developer has complied with its payment obligations under any connection or other agreement with Uisce Eireann, ESB or other utility providers, together with supporting documentary evidence in a form acceptable to DCC;
- (c) evidence of compliance by the Developer with its obligations to procure a Development Bond;
- (d) an interim certificate of compliance from the Construction Contractor and Design Team in the form attached at Appendix 16 Part 2 confirming that in respect of the relevant stage of the Works that it has been designed and constructed in accordance with the Planning Permission and Building Regulations;
- (e) evidence satisfactory to DCC that the Developer has a current and valid tax clearance certificate; and
- (f) in respect of any Interim Payment Application, the appropriate VAT invoices issued in accordance with the provisions of the VAT Act.
- 8.5 Any VAT invoices issued by the Developer to DCC must be issued no later than 15 days after the end of the month in which the relevant Interim Payment Application is made (for payments made under Clause 8.1(c)) or no later than 15 days after the end of the month in which the date of Practical Completion occurs (for payment made under Clause 8.3).

- 8.6 No Recommendation shall include any allowance for goods and materials which are off-site save to the extent the Parties have agreed in writing to the contrary.

## **9. Retention**

- 9.1 DCC shall be entitled to retain from each monthly payment to the Developer an amount equal to 5% of the amount specified in a Recommendation and hold the amounts so retained as a "Retention Fund".
- 9.2 Subject to any right to withhold, call on or appropriate to its account the Retention Fund (or any part thereof) that DCC may have, DCC shall release to the Developer:
- (a) 50% of the Retention Fund referable to the Works on the achievement of Practical Completion and the Developer may claim such amount with the next monthly interim payment application to issue after the Date of Practical Completion; and
  - (b) the balance of the Retention Fund referable to the Works on the expiry of the Defects Liability Period, or if there are outstanding defects which have been notified in accordance with Clause 7.2, upon rectification of those defects to the satisfaction of DCC's Representative, acting reasonably.
- 9.3 Without prejudice to any other provision of this Agreement, where the DCC has or may suffer cost, loss or damage by reason of a breach of this Agreement by the Developer, the DCC may:
- (a) withhold a reasonable amount from any moneys in the Retention Fund otherwise due to be returned to the Developer under Clause 9.2 above pending ascertainment of the DCC's loss pursuant to the breach; and
  - (b) appropriate to its account any portion of the Retention Fund that it properly holds which is required to make good any ascertained cost, loss or damage suffered by the DCC by reason of the breach.

## **10. Further Obligations**

- 10.1 As part of the Development the Developer shall procure satisfactory connections to the Local Authority's and Uisce Éireann ("UE") water mains and sewers in accordance with the requirements of such Local Authority and UE as the case may be, and to ESB Networks ("ESBN") distribution system. The Developer shall be responsible for the Connection Charges and shall discharge the Connection Charges either directly to UE and ESN. The Developer shall also liaise with and assist UE and ESN and shall be responsible for the provision of all the associated civil and attendance works to bring the water and electricity to individual connection points for connection of all Units to the UE and ESN systems. All other associated works required to bring water and electricity to the individual connection points for each Unit shall be provided by the Developer as part of the Works including any works which may be required outside of the Development Site.
- 10.2 The Developer will pay all rates, taxes and outgoings in respect of the Development Site from the date of the execution of this Agreement. The Developer shall comply with all EU

and domestic taxation law and requirements, including but not limited to Circular 43/2006 issued by the Department of Finance.

- 10.3 The Developer shall as and from the date hereof manage the Development Site in accordance with the principles of good estate management pending the grant by DCC of the Common Areas Transfer pursuant to this Agreement.

## **11. Protect and Secure the Development Site**

- 11.1 Prior to the commencement of the Development on the Development Site the Developer shall provide at its own expense to the reasonable satisfaction of DCC a secure fence or boundary hoarding of a specification approved in advance by DCC.

- 11.2 The Developer at its own expense shall support, shore up, protect and make proper provision for the support and use of any adjoining or neighbouring lands (including the adjoining and neighbouring land of DCC and the parts of the Development Site which have not been licensed to the Developer), and all and any buildings, walls, roads and footpaths which may be on or partly on or adjoining the Development Site and for that purpose shall enter in such arrangements and upon such terms reasonably acceptable to DCC as may be necessary or desirable with adjoining or neighbouring owners or occupiers in respect thereof.

## **12. Insurance**

- 12.1 The Developer shall be liable for and shall indemnify DCC against any liability, loss, claim, expense or proceeding whatsoever arising under any statute or at common law in respect of:

- (a) loss, damage or injury to any property real or personal insofar as any such loss, damage or injury arises out of or in the course of or by reason of the execution of the Works; and
- (b) personal injury to or disease contracted by or the death of any person whomsoever arising out of or in the course of or caused by the execution of the Works;

provided always that the Developer's liability under this indemnity shall be reduced proportionately to the extent that any liability, loss, claim, expense or proceeding otherwise indemnified has resulted from the negligence of DCC or its agents, employees, consultants and subcontractors (excluding the Developer and its agents, employees, consultants and subcontractors of any tier).

- 12.2 Insurance to be Effected by the Developer:

- (a) The Developer shall (and shall procure that the Construction Contractor shall) take out before commencing the Works and maintain until the Date of Practical Completion:

- 12.2.a.1 Public Liability insurance having a minimum indemnity limit of €10,000,000 (ten million euro) for any one incident; and

12.2.a.2 Employer's Liability insurance having a minimum indemnity limit of €13,000,000 (thirteen million euro)

covering any liability, loss, claim or proceedings in respect of the matters referred to in Clause 12.1 and that each such policy contain indemnity to principals endorsements for the express benefit of DCC, the HFA, and/or any other person nominated by DCC.

12.3 Without prejudice to the matters stated at Clause 12.1 and 12.2 above, the Developer shall ensure that any sub-contractors or agents engaged in the Works have adequate public liability and employer's liability insurances and shall, if requested to do so, cause satisfactory evidence of such insurances to be furnished to DCC.

12.4 The Developer will procure that as conditions of:

- (a) the Building Contract,
- (b) any Subcontract; and
- (c) each Design Team Appointment,

that each of, respectively:

- (d) the Construction Contractor (if the Building Contract is a design and build contract or otherwise contains design obligations),
- (e) any Sub-Contractor; and
- (f) the members of the Design Team,

shall be required to maintain adequate professional indemnity insurance cover in relation to those parties' respective design responsibilities for the Development with a reputable insurer. The insurance cover must (unless otherwise agreed between the parties acting reasonably) be for a minimum indemnity limit of €6,500,000 for each and every claim. In the case of Design Team members, or Sub-Contractors, who do not have design, plan or specification responsibilities for architectural, structural or fire safety elements of the Development, professional indemnity insurance cover must be for a minimum indemnity limit of €2,600,000 (two million six hundred thousand euro) . The Developer shall procure that the Construction Contractor, the Sub-Contractors and members of the Design Team shall be under an obligation to keep that insurance in force for at least 12 years following the Date of Practical Completion.

12.5 The Developer shall before commencing the Works (or any part) take out (or procure the taking out of) All Risks insurance and the Developer shall maintain such insurance:

- (a) until the Date of Practical Completion covering any loss or damage to the Works from any cause whatsoever; and
- (b) during the Defects Liability Period covering any loss or damage to the Works arising in the course of and pursuant to any Defect rectification work by or on behalf of the Developer;

for the full reinstatement value of the Works, including the cost of demolition from time to time plus a reasonable allowance to cover for the cost of inflation during any period of

rebuilding or reinstatement plus a percentage for professional fees and the cost of Site clearance.

- 12.6 The Developer shall procure that:
- (a) the insurances effected by the Construction Contractor pursuant to the Building Contract (other than in respect of the All Risks insurance and the professional indemnity insurance) shall be extended to provide an indemnity to principals specifically for the benefit of DCC and the HFA as principals; and
  - (b) the All Risks insurance policy identify as co insured under the policy each of the Construction Contractor, the Developer, the HFA, and DCC.
- 12.7 The Developer shall procure that the All Risk policy taken out in respect of the Works provides that:
- (a) the HFA is to be named as the sole loss payee for all claims on the policy over €250,000;
  - (b) otherwise, the monies received under the All Risks insurance policy (less the portion included to cover professional fees which shall be paid to the Developer) shall be paid into a bank account ("Joint Account") in the joint names of the Developer and DCC.
- 12.8 The Developer shall procure that the insurance policies described in this Clause 12 shall be with reputable insurers and that the said policies shall contain only such exclusions as are normally permitted in the construction industry in Ireland (but, with regard to the All Risk policy, not in respect of loss or damage due to design) and as are published from time to time by the Royal Institute of the Architects of Ireland, the Construction Industry Federation and the Society of Chartered Surveyors in the Republic of Ireland.
- 12.9 The Developer will procure that at all times during the construction of the Works that the insurances provided for in the Building Contract and the Design Team Appointments are maintained and the Developer shall, prior to the commencement of the Works and otherwise when called upon by DCC, furnish to DCC evidence that those insurances are in full force and effect and that all premiums in respect thereof are paid up to date.
- 12.10 The Developer must give immediate notice in writing to DCC as soon as it is brought to the Developer's attention that the Works or any part thereof are damaged or destroyed by an insured risk prior to the Date of Practical Completion.
- 12.11 If an insured risk occurs and causes damage or loss to the Works during the performance of any of the Developer's obligations under this Agreement, subject to Clause 12.12, the Developer shall procure:
- (a) that any part of the Works damaged or destroyed be reinstated with due diligence;
  - (b) the replacement or repair of any unfixed materials or goods damaged or destroyed; and
  - (c) the removal and disposal of any debris;

and the Developer shall thereafter proceed with the carrying out and completion of the Works.

12.12 At the election of the HFA, in the event of a Major Claim on the All Risks insurance policy, the proceeds from such claim may be applied by the HFA against amounts due to it from DCC pursuant to the Facility Agreement. In such circumstances, the Parties agree that a variation shall be administered to the scope of the Works to omit any requirement for the Developer to undertake any necessary rectification works in accordance with Clause 12.11 (to reasonably reflect the extent to which the quantum of claim proceeds are applied in this manner) (a "**Damage Rectification Variation**"). Otherwise, subject to the consent of DCC (which consent shall not be unreasonably withheld (and where it is withheld a Damage Rectification Variation shall be administered by DCC to reasonably reflect the extent of the withholding)), the parties shall procure that the monies received under the All Risks insurance policy and paid into the Joint Account shall be paid out of the Joint Account to the Developer by instalments under certificates related to the proportion of the work done and materials and goods delivered upon the site for making good the loss, damage or destruction. If the proceeds from any claim on the All Risk insurance policy (which are not withheld by the HFA or DCC as contemplated under this Clause 12.12) are insufficient to cover the cost of reinstatement, replacement, or repair of any Works which have been damaged or destroyed (after taking account of any omitted scope pursuant to a Damage Rectification Variation) the Developer shall make good any deficiency out of its own monies.

12.13 For the purposes of Clause 12:

(a) "**Major Claim**" means a claim on the All Risk policy in an amount in excess of €250,000;

(b) an "**insured risk**":

12.13.b.1 is a risk which is insured or which should have been insured under any one or more of the policies required to be taken out or maintained pursuant to this Clause 12 (the "**Agreement Policies**");

12.13.b.2 without limitation, will be deemed to include a risk which would have been insured under an Agreement Policy but for:

(a) any breach by the Developer (or any of its employees, agents, consultants and subcontractors) of either this Agreement or the relevant Agreement Policy terms and conditions;

(c) the insolvency of the insurer under the relevant Agreement Policy;

(d) "**Facility Agreement**" means the agreement between DCC and the HFA in respect of the provision of finance for the carrying out of the Works under this Agreement.

### 13. Practical Completion

- 13.1 The Developer's Architect shall provide not less than 2 weeks prior written notice to DCC's Representative of the date it anticipates the Development will reach Practical Completion. The Developer's Architect shall facilitate a joint inspection of the Development with DCC's Representative and a representative of the HFA (if required by DCC), within 5 Working Days of receipt by the Developer's Architect of notice that the Works are available for inspection.
- 13.2 DCC's Representative (acting reasonably) shall notify the Developer's Architect in writing within five (5) Working Days of such joint inspection identifying works necessary, in the opinion of DCC's Representative, to achieve Practical Completion and the Developer will endeavour to resolve what (if any) action should be taken, but if they cannot or do not do so:
- (a) A list of outstanding works shall be prepared by DCC's Representative and the Certificate of Practical Completion will be issued subject to completion of those works (or such of them, if there is a dispute, as may be determined pursuant to Clause (b) below) and subject to the Developer complying with the provisions of Clause 13.3 below. The Developer shall undertake in writing to DCC to carry out the said outstanding works without delay; or
  - (b) the objection or the list of outstanding works not so resolved shall be submitted to the Independent Architect who acting as an Expert shall decide the matter within ten Working Days of such referral and his decision shall be binding and conclusive upon the parties. The Independent Architect may obtain from the parties such evidence whether written or oral as he may require and make such order as to costs as he shall in his absolute discretion decide. He will however give written reasons for his decision.
- 13.3 The Developer shall, without delay and at its own expense, carry out such works and/or remedy any omission or defect as may be required in consequence of the material objections of DCC or the decision of the Independent Architect. Save where the provisions of Clause 13.2(a) above apply, the date of Practical Completion shall in such event be the date upon which:-
- (a) such works omissions or defects as are necessary as a result of the objections of DCC and/or the Independent Architect's decision are completed by the Developer to the reasonable satisfaction of DCC's Representative or the Independent Architect as the case may be; and,
  - (b) the Developer complies with the provisions of Clause 13.4 below.
- 13.4 On or before the Date of Practical Completion, the Developer shall furnish to DCC the following documents:-
- (a) The Developer's Architect's Opinion on Compliance in standard RIAI form without qualification that the Development has been built in substantial compliance with the Planning Permission together with all confirmations and other documents referred to or relied upon therein;
  - (b) Evidence that the LDI Policy has been put in place in respect of each Unit;
  - (c) Written evidence of up to date professional indemnity insurance for the Construction Contractor, the Sub-Contractors and the members of the Design

Team and where such parties are a body corporate, certified copy Certificates of Incorporation and Memoranda and Articles of Association together with a letter from the insurance brokers for the Construction Contractor, Sub-Contractors and Design Team confirming that all insurances required under this Agreement are in place;

- (d) one hard copy of all "as built drawings" to include services in the form of stable negatives and one soft copy on CAD disk(s);
- (e) a certified copy of the Certificate of Practical Completion under the Building Contract;
- (f) satisfactory evidence from the Local Authority that all financial contributions and bond requirements under the Requisite Consents have been paid;
- (g) certified copies of the Commencement Notice served on the Local Authority where required and the Local Authority's acknowledgement;
- (h) Fire Safety Certificate;
- (i) Disability Access Certificate;
- (j) All necessary information and documents for the Safety File as that term is defined in the Safety Regulations, on CAD disk, the Construction Contractor's site specific Health and Safety Plan and the Construction Contractor's Safety Statement pursuant to Section 20 of the Safety, Health and Welfare Act, 2005;
- (k) All relevant certificates required under 2014 Regulations, including Ancillary Certificates and (i) copies of all Ancillary Certificates issued for the Works and (ii) a signed statement listing all Ancillary Certificates provided or signed by any Sub-Contractor engaged by the Construction Contractor;
- (l) A certificate of compliance from the Construction Contractor in the form set out in Appendix 16 Part 1 that the Works have been constructed in compliance with the Requisite Consents, Building Control Act and the Building Regulations;
- (m) Signed certificates of compliance from each Sub-Contractor;
- (n) complete suite of Collateral Warranties from the Developer, Construction Contractor, Sub-contractors and Design Team executed in favour of DCC and each Beneficiary;
- (o) Confirmation by way of BER Certificate and Advisory Report from suitably qualified BER assessor that the Building Energy Rating of the Residential Units conforms to a minimum of A rated standards;
- (p) Certified copies of executed appointments of each member of the Design Team, the Project Supervisor Design Process, The Project Supervisor Construction Stage, the Assigned Certifier and the Design Certifier, to the extent not already provided;
- (q) Certified Copy of the Certificate of Compliance on Completion with evidence that same has been submitted to the Building Control Authority and relevant particulars thereof have been included on the register maintained under Part IV of the 2014 Building Control Regulations;

- (r) A full set of keys and alarm codes;
- (s) any other documents legally required to be delivered at the time of Practical Completion;
- (t) Replies to Law Society MUD Act Requisitions and all supporting documents to evidence full compliance with the MUD Act;
- (u) Tailte Éireann approved scheme map for the Residential Units;
- (v) evidence that all enforcement notices issued by any statutory authority with jurisdiction over the Works (if any) have been cleared from the record;
- (w) copies of the full suite of testing and commissioning certificates produced in respect of the Works;
- (x) certified copies of all product guarantees and warranties (and evidence that the benefit of those guarantees and warranties will inure to DCC);
- (y) a handover manual including detailed guidelines for the operation of the housing units;
- (z) any certified sustainability certificates (if applicable);
- (aa) a schedule of proposed maintenance spares and evidence that those spares have been made available to the Development;
- (bb) a suited key schedule and labelled key box;
- (cc) schedule of maintainable assets and associated guidelines and contact details; and
- (dd) training schedule and demonstrations for maintainable systems.

**14. Management Company and Transfer of Title**

- 14.1 Within three (3) months from the date of this Agreement, the Developer shall set up the Management Company in accordance with the requirements of the Planning Permission for the Emmet Road Project and in accordance with the provisions of the MUD Act and shall deliver the Management Company documents set out at Clause 14.2 below to DCC.
- 14.2 The Management Company documents (including but not limited to Constitution, Management Company Agreement, Management Company Transfer, proposed map; service charge budget and any house rules or other document required under the MUD Act) shall be in a form acceptable to DCC (such approval not to be unreasonable withheld or delayed).
- 14.3 Within 10 Working Days after the dates of Practical Completion, DCC shall, on written request from the Developer and at the Developer's expense, deliver:
  - (a) the Common Area Transfer to the Management Company;
  - (b) the Assurance(s) to the Developer of the Developer Units; and

(c) the Assurance(s) to DCC or its nominee of the Residential Units;

together with each of the documents referred to in clauses (i) to (iv) below in respect of each of the Units:

- (i) Solicitor's Certificate re Family Law;
- (ii) Certified copy Section 72 Declaration;
- (iii) Where applicable, a Certificate re Section 183 (1) of the Local Government Act, 2001; and
- (iv) Such other documents as may be reasonably required having regard to best practice for acquiring good and marketable title provided such documents are ordinarily provided in such transactions and can be provided at reasonable cost by DCC.

14.4 Within thirty (30) Working Days after delivery of the documents at Clause 14.3 above, the Developer shall deliver to the Management Company counterpart appropriately stamped dated and fully executed Assurance(s) of the Developer Units.

14.5 The Assurance(s) to the Developer of the Developer Units shall include a positive covenant on the part of the owner of the Developer Units (and its successors and assigns) to use all reasonable endeavours to ensure that the Developer Units remain occupied and operational during usual business hours and in accordance with the Planning Permission together with an obligation that any lease to any occupant of the Developer Units or any part thereof shall include a similar positive covenant.

## **15. DCC's Rights to Determine**

15.1 Without prejudice to any other rights, remedies or other powers herein contained or otherwise available to DCC:

- (a) If for any reason the Development shall not be completed and made fit for use or occupation during the Term (or such longer period as DCC shall allow) or if for any reason the Development shall not be completed and made fit for use or occupation during the Term, or if the Developer shall in any material way fail to perform and observe the covenants and conditions on its part herein contained or shall fail to remedy any breach of any of the said covenants and conditions within two months of the receipt of notice in writing to that effect from DCC; or
- (b) Without prejudice to the generality of the provisions of Clause (a). above, if the Developer materially breaches the Plans and/or the Developer's Timetable; or
- (c) If the Developer abandons the Works; or
- (d) If this Agreement has been subject to a substantial modification which would have required a new procurement procedure in accordance with Regulation 72 of the 2016 Regulations; or
- (e) If the Developer, the Construction Contractor or any member of the pre-qualified Design Team has, at the time of entry into this Development Agreement, been in one of the situations referred to in Regulation 57 (1) or (2)

of the 2016 Regulations and should therefore have been excluded from the Procurement; or

- (f) If this Agreement should not have been awarded to the Developer in view of a serious infringement of the obligations under the Treaties governing the European Union or the 2016 Regulations that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the Treaty on the Functioning of the European Union; or
- (g) If for any reason the carrying out of the Development is wholly or partly suspended for more than three months in any period of six months and such suspension shall continue for and shall not be remedied within three months after service on the Developer by DCC of a notice specifying the suspension and invoking the provisions of this Clause; or
- (h) If it transpires that the Developer provided information or confirmations to DCC as part of the Procurement which are proved to be untrue, misleading or incorrect; or
- (i) If a Receiver, Liquidator or Examiner is appointed in respect of the Developer and if such appointment is not terminated or set aside within twenty one days of the date of such appointment and if the carrying out of the Development is wholly or substantially suspended for more than fourteen days as a result of such appointment and such suspension shall continue for and shall not be remedied within three months after service on the Developer by DCC of a notice specifying the suspension and invoking the provisions of this Sub-Clause;

then and in any such case this Agreement may be determined by DCC by notice in writing to that effect (such notice to take effect without prejudice to the rights of the parties hereof in respect of antecedent breach) and DCC shall have liberty to re-enter the Development Site and, in such event, all building materials, fixtures, plant, equipment and materials on the property shall become the property of DCC.

15.2 Upon termination of this Agreement by DCC in accordance with Clause 15.1:

- (a) the Developer shall cease all further work, except for such work as may be necessary for the protection of life or the Development or the Works;
- (b) the Developer shall hand over all reports, notes of meetings, data schedules, programmes, bills of quantities, budgets, correspondence and any other materials or documents provided or prepared in connection with the Works and all updates, amendments, additions and revisions to them;
- (c) if applicable, DCC or the HFA shall be entitled to exercise its step-in rights under the Collateral Warranties and the Developer shall assist and facilitate such step-in and provide all information in the Developer's possession in relation to the relevant contracts to which DCC (or its nominee), or the HFA (or its nominee) is stepping in;
- (d) no further amounts will be payable by DCC to the Developer except as set out in Clause 15.3; and
- (e) DCC may procure the engagement of other parties to carry out and complete the Works, instead of the Developer.

15.3 Following completion of the Works, the Developer shall be entitled to apply in accordance with Clause 8 for payment of the (positive) difference (if any) between X -Y where:

X = the amount due to the Developer for the Works, as completed by the Developer, in accordance with this Agreement, but which remains unpaid at the date of termination; and

Y = the aggregate of:

(A) DCC's additional cost of procuring the completion of the Works compared with the cost that it would have paid to the Developer if the Works had been completed by the Developer, in accordance with this Agreement;

(B) the loss, and damage (including loss or damage arising from any liability) incurred by DCC as a result of or in connection with the termination, and/or the completion of the Works by others; and

(C) without double counting, any other amounts due to DCC by the Developer under or in connection with this Agreement.

**PROVIDED ALWAYS** that the Developer shall be liable to DCC for an amount equal to the negative difference (if any) to result after subtracting Y from X (which amount DCC may recover from the Developer as a debt due from the Developer).

15.4 Without prejudice to the foregoing, in the event that, following the award of this Agreement, the Developer cannot, for whatever reason, deliver the Development to the satisfaction of DCC or does not fulfil one of the conditions set out in the ISFT or this Agreement, DCC reserves the right to award a Development Agreement to the next highest-ranked tenderer emerging from the Procurement at any time during the tender validity period specified in the ISFT. This shall be without prejudice to the right of DCC to terminate the Development Agreement and commence a new procurement process.

## 16. Performance Security For Developer<sup>5</sup>

16.1 The Developer shall procure the performance of its obligations under this Agreement are guaranteed by the provision of a Development Bond in a sum of 12.5% of the DCC Consideration (from an Irish bank or other financial institution acceptable to DCC acting reasonably).<sup>6</sup>

16.2 The Developer's compliance with its obligations in Clause 16.1 is a strict pre-condition to the Developer's entitlement to any payment under this Agreement.

## 17. Building Regulations

17.1 The Developer shall, upon Practical Completion furnish to DCC a certificate in the form of the specimen attached in Appendix 16 Part 1 from the Construction Contractor certifying that the Development been carried out in substantial compliance with the Building Control Act, the Building Regulations, and the Requisite Consents.

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<sup>5</sup> Note that developer may be required to give a parent company guarantee if applicable and subject to financial due diligence

<sup>6</sup> Alternatively, a bond from the building contractor may be procured in favour of the developer and assigned to DCC

- 17.2 Without limiting the generality of the foregoing, the Developer agrees to procure compliance with the provisions of the Building Regulations and the Code of Practice insofar as they relate to the construction of the Works. The Developer further agrees to procure in the forms and within the time limits prescribed in the Building Regulations, all undertakings, certificates, confirmations and documents to be provided by a “Builder” pursuant to the Building Regulations and/or the Code of Practice.
- 17.3 The Developer agrees to procure from the Construction Contractor and Sub-Contractors such Ancillary Certificates as may be required by the Assigned Certifier. For this purpose the Developer agrees that it shall include the provisions set out in Appendix 17 in any Sub-contract of any part of the Works. As a pre-condition to Practical Completion the Developer shall provide such Ancillary Certificates, as may be required by the Design Certifier and/or the Assigned Certifier from the Construction Contractor and the Sub-Contractors.
- 17.4 The Developer shall appoint the Construction Contractor to carry out and perform the role of the “Builder” as defined in and for the purposes of the Building Regulations and the Code of Practice respectively.
- 17.5 The Developer agrees to cooperate and coordinate with the Assigned Certifier in relation to the adoption and maintenance throughout the duration of the Works, of an appropriate Inspection Plan and Inspection Notification Framework which take full account of relevant factors for the Works including the complexity of the Works. For the avoidance of doubt, nothing in this clause shall relieve the Developer of its own obligations in this respect.

#### **18. Appointment of and co-operation with Design Certifier and Assigned Certifier**

- 18.1 The Parties agree that the Developer shall be the “Building Owner” for the purpose of the Building Regulations and Code of Practice.
- 18.2 The Developer shall appoint a competent person to carry out the functions and comply with the obligations of Design Certifier and Assigned Certifier in accordance with the Building Regulations and the Code of Practice.
- 18.3 The Developer shall, upon request and within a reasonable timeframe, without charge, supply or procure the supply of sufficient and accurate data information and assistance to the Design Certifier and Assigned Certifier in connection with the Inspection Plan and the Inspection Notification Framework to facilitate compliance by the Design Certifier and Assigned Certifier with their obligations under the Building Regulations.
- 18.4 The Developer shall be responsible for all costs in respect of its compliance with the requirements of this Clause 18.

#### **19. 2014 Regulations Certificates**

The Developer will procure the provision and execution of certificates of compliance from each member of the Design Team, Construction Contractor and Sub-Contractors required under the 2014 Regulations, including all Ancillary Certificates. The Developer shall furnish (i) copies of all Ancillary Certificates issued for the Works to the Employer and (ii) a signed statement listing all Ancillary Certificates provided or signed by the Construction Contractor, Design Team, and Sub-Contractors.

## **20. Social Employment Clause**

20.1 For the duration of the Term, the Developer shall procure that the Construction Contractor shall use reasonable endeavours to ensure that

- (a) 10% of the aggregate number of Person Weeks (being a whole number, rounded down, where a "Person Week" is the amount of work done by an individual worker in relation to the Works based on a 39 hour working week) will be carried out at the Development Site by individuals who have been registered on a national unemployment register within the European Union (and States that are party to the EEA Agreement) for a continuous period of at least 12 months immediately prior to their employment specifically for the purposes of the execution of the Works ("Relevant Workers"). For the purposes of this clause, any of the Construction Contractor's personnel whose employment commenced more than 4 weeks prior to the date of this Agreement shall not be considered to be a Relevant Worker; and
- (b) 5% of the Person Weeks (being a whole number, rounded down) is carried out at the site by individuals who are employed under a registered scheme of apprenticeship or equivalent national training or educational work placement arrangement accredited within the European Union ("Relevant Trainees").

20.2 Individuals engaged by the Construction Contractor in accordance with Clauses 20.1(a) and 20.1(b) above may progress into full-time jobs and apprenticeships. DCC acknowledges that jobs may be dependent on the availability of appropriate skills.

### **20.3 Employment Coordinator**

- (a) The Developer will nominate an Employment Coordinator who shall oversee the implementation of the requirements of Clauses 20.1(a) and 20.1(b) above ("the Initiative") and deal with any of DCC's and the Construction Contractor's queries in connection with it.
- (b) The Employment Coordinator shall, irrespective of the form of contract under which the Construction Contractor is engaged, be responsible for monitoring the implementation of the Initiative by the Developer and the Construction Contractor.

### **20.4 Meetings**

The Employment Coordinator shall, within 2 weeks of the date of the Building Contract, organise a 'Meet the Contractor Day', which will be hosted at a venue local to the Development Site, to be agreed with the Construction Contractor. The aim of the day will be to introduce the Development and the Construction Contractor to local people and businesses.

### **20.5 Training and Development**

The Employment Co-ordinator will work with educational provider partners to identify training opportunities / up-skilling programmes in relation to employment opportunities arising from the Emmet Road Project and co-ordinate their development and roll-out by educational partners for the local community

### **20.6 Contract Documentation**

The Developer shall procure that the Construction Contractor's obligations and responsibilities with regard to the Initiative will be set out in the Building Contract and will form part of the Contract between the Developer and the Construction Contractor.

**21. No Partnership**

This Agreement does not create nor shall it in any circumstance be taken or construed as having created a partnership or joint venture between DCC and the Developer. Nothing in this agreement is intended to, or shall be deemed to, constitute any party the agent of another party. The Developer confirms that it is acting on its own behalf and not for the benefit of any other person.

**22. Fees and Costs**

Except as expressly provided in this Agreement, the Developer and DCC shall each be liable for and shall pay its own costs and expenses incurred in connection with the negotiation, preparation, execution and performance of this Agreement (and any documents referred to in it).

**23. No Assignment**

23.1 This Agreement is not to operate as a transfer, lease or other assurance of title and it shall not be capable of transfer or assignment or mortgage/charge by the Developer except in the case of a financial institution or institutions which has or have entered into a mortgage or other form of security with the Developer which mortgage or other form of security shall be first approved in writing by DCC and, where approved, shall be subject to such conditions as DCC may in its discretion impose and must have been entered into specifically for the purposes of financing the Developer to enable it to undertake and complete the Development on the Development Site (and for no other purpose).

23.2 The Developer shall not without the prior written consent of DCC assign, charge or create any security interest over this Agreement and, where consent is given, same shall be subject to such conditions as DCC may in its discretion impose. DCC may assign transfer or otherwise novate the benefit and/or the burden of this Agreement without the Developer's consent and the Developer hereby consents to any such assignment, transfer or novation of this Contract by DCC. The Developer, shall, if required to do so, enter a novation agreement in such form acceptable to DCC within 10 (ten) Working Days of such request.

23.3 The sub-contracting of any part of the Works shall not relieve the Developer from any liability under or connected with this Agreement. The Developer at his own cost shall be entirely responsible for the co-ordination of all works carried out by the Construction Contractor and any Sub-Contractors so as to ensure that the Works are progressed in a timely manner in accordance with this Agreement.

**24. No Warranty**

24.1 DCC does not warrant whether expressly or by implication, and it is hereby agreed that DCC has not made or given such warranty, that the Development Site qualifies or is suitable for the Development envisaged by this Agreement or as to the condition thereof and the Developer shall its own cost satisfy itself as to quality, suitability and condition of the Development Site for the Development envisaged by this Agreement prior to the commencement of the Development.

24.2 DCC makes no representation and gives no warranty as to the accuracy of any Development Site ground information or data howsoever obtained by the Developer, including the position of sewers, wires, cables, pipes, or other conduits (if any) within or

over or adjacent to the Development Site or as to the ground, geotechnical, environmental, structural, hydrological and/or climatic conditions on the Development Site and/or the general suitability of the Development Site for the Works. The Developer shall be deemed to have carried out its own investigations to determine ground, geotechnical, environmental, structural, hydrological and climatic conditions of the Development Site. The Developer confirms and acknowledges that it is responsible for the full cost of the Works under this Agreement and for the avoidance of doubt shall not be entitled to any payment or compensation for any reason whatsoever in relation to Development Site conditions.

- 24.3 The Developer acknowledges that DCC is, and will at all times be, relying upon the Developer's professional expertise and judgment. No inspection review, consent or approval by the DCC, DCC's Representative or any person acting on behalf of DCC, or any omission to inspect, review, object to or disapprove, shall negate or in any way diminish any duty or liability of the Developer under or in connection with this Agreement.
- 24.4 The Developer warrants that it has examined the Development Site and has satisfied itself that same is suitable to enable the Developer to proceed with the Development and completion of the design of the Works and to carry out and complete the Works.
- 24.5 The Developer acknowledges that DCC has provided satisfactory evidence of its title to the Development Site, that it has been afforded the opportunity to carry out a full investigation of title, that all deeds and documents necessary to show DCC's title to the Development Site are in the possession of DCC and copies have been provided to the Developer and the Developer has satisfied itself that the title to the Development Site is a good and marketable title and is of a quality commensurate with prudent standards of current conveyancing practice in Ireland.

## **25. Expert**

- 25.1 If any dispute or difference arises between DCC and the Developer as to their respective, rights, duties and obligations hereunder or as to any matter arising out of or in connection with the subject matter of this Agreement (other than any matter arising directly or indirectly out of Clauses 4.17(e), 7.3, or 13 hereof and/or with regard to the meaning or construction of this Agreement) the same shall be referred to an independent chartered surveyor of not less than ten years standing appointed in default of agreement between the parties within 5 Working Days by the President for the time-being of the Society of Chartered Surveyors Ireland. Any dispute or difference between DCC and the Developer arising directly or indirectly out of Clauses 4.17(e), 7.3, or 13 hereof shall be referred to an Independent Architect.
- 25.2 The Expert is required to prepare a written decision, including reasons, and give notice (including a copy) of the decision to the parties within a maximum of three months of the matter being referred to the Expert.
- 25.3 If the Expert dies or becomes unwilling or incapable of acting, or does not deliver the decision within the time required by this clause then:
- (a) either party may apply to relevant Institute to discharge the Expert and to appoint a replacement Expert with the required expertise; and
  - (b) this clause shall apply to the new Expert as if they were the first Expert appointed.

- 25.4 The parties are entitled to make submissions to the Expert, including oral submissions, and will provide (or procure that others provide) the Expert with such assistance and documents as the Expert reasonably requires for the purpose of reaching a decision.
- 25.5 To the extent not provided for by this clause, the Expert may in their reasonable discretion determine such other procedures to assist with the conduct of the determination as they consider just or appropriate including (to the extent considered necessary) instructing professional advisers to assist them in reaching their determination.
- 25.6 Each party shall with reasonable promptness supply each other with all information and give each other access to all documentation and personnel and/or things as the other party may reasonably require to make a submission under this clause.
- 25.7 The Expert shall act as an expert and not as an arbitrator. The Expert shall determine the matter in dispute which may include any issue involving the interpretation of any provision of this Agreement, their jurisdiction to determine the matters and issues referred to them and/or their terms of reference. The Expert may award interest as part of their decision. The Expert's written decision on the matters referred to them shall be final and binding on the parties in the absence of manifest error or fraud.
- 25.8 The Expert may direct that any legal costs and expenses incurred by a party in respect of the determination shall be paid by another party to the determination on the general principle that costs should follow the event, except where it appears to the Expert that, in the circumstances, this is not appropriate in relation to the whole or part of such costs. The Expert's fees and any costs properly incurred by them in arriving at their determination (including any fees and costs of any advisers appointed by the Expert) shall be borne by the parties in such proportions as the Expert shall direct.
- 25.9 All matters concerning the process and result of the determination by the Expert shall be kept confidential among the parties and the Expert.
- 25.10 Each party shall act reasonably and co-operate to give effect to the provisions of this clause and otherwise do nothing to hinder or prevent the Expert from reaching their determination.

**26. Survival of Agreement**

It is hereby agreed that such provisions of this Agreement as shall not have been fully performed at the time of the granting of the last of Assurance pursuant to Clause 14 shall remain in full force and effect until performed and accordingly this Agreement shall not merge in such Assurance.

**27. Delay and Extension of Time**

27.1 If in the opinion of the Developer's Architect the Developer has been or will be delayed in acquiring Practical Completion by the expiration of the Term:-

- (a) by Force Majeure;
- (b) by reason of loss or damage to the Works or ancillary matters which are covered by the insurance provisions of this Agreement; or
- (c) any breach of this Agreement by DCC which causes a delay to the completion of the Works; or

(d) a Variation;

then in any such case the Developer shall within 5 (five) Working Days of the happening of the event notify DCC's Representative who shall, as soon as it is practicable for him to do so (having received all requested information from the Developer) make a fair and reasonable extension of time for completion of the Works. Upon the happening of any such event causing delay the Developer shall nevertheless use constantly all reasonable endeavours to prevent delay and to proceed with the Works. In determining what extension of time (if any) is fair and reasonable under this paragraph for loss or damage to the Works or ancillary matters, DCC's Representative shall have regard in particular to any negligence, omission or default of the Developer which caused or contributed thereto.

27.2 In the event that DCC's Representative does determine an extension of time under this clause 27 then the Developer's Timetable shall be updated to reflect the agreed extension of time.

27.3 In the event that there is a dispute between the parties as to whether an extension of time should be granted or the period of that extension of time then either of the parties shall be entitled to refer the determination of the matter to the Expert who shall give his decision within seven Working Days from the date of the matter being referred to him.

27.4 No extension of time shall be granted pursuant to this clause where any of the events above arise wholly or in part from the default negligence or omission of the Developer.

27.5 For the avoidance of doubt the Developer shall not be entitled to any increase in the DCC Consideration as result of the granting of an extension of time.

## **28. Damages for Non-Completion**

If the Developer fails to achieve Practical Completion by the expiration of the Term and DCC's Representative (after consultation with the Developer) certifies in writing on simultaneous notice to DCC and the Developer that in his opinion the same ought reasonably to have been completed, the Developer shall pay or allow to DCC liquidated and ascertained damages at a rate of €50,000 per week or part thereof (it being accepted by all parties that this amount is a bona fide assessment of the likely loss suffered by DCC due to a delay in completion of the Works) for the period during which the said Works shall so remain or have remained incomplete and DCC may deduct such damages from any money due or to become due to the Developer under this Agreement.

## **29. Inspection, Monitoring and Reporting**

29.1 DCC, DCC's Representative, the Technical Due Diligence Team and/or any person nominated by DCC, shall have the right for itself, its authorised agents and/or advisors at all reasonable times and on giving reasonable notice (being (i) not less than two (2) Working Days' notice in writing to the Developer or (ii) upon shorter notice, by agreement with the Developer) to inspect the state, progress and quality of the Works in relation to the Residential Units in the company of the Developer's Architect or any other agent or advisor as the Developer may reasonably require and to ascertain generally that the terms of this Agreement have been and are being duly observed PROVIDED HOWEVER that DCC (and any person nominated by DCC, including the Technical Due Diligence Team) shall (a)

use best endeavours to attend any such inspections together at the same time and (b) shall undertake a reasonable amount of inspections each month.

- 29.2 The Developer must at all times engage collaboratively with the Technical Due Diligence Team and respond to queries in a methodical and efficient manner as agreed between the lead parties at the start of the Development.
- 29.3 The Developer must use reasonable endeavours to procure that proper account is taken of any reasonable representations made by DCC's Representative and/or the Technical Due Diligence Team to the Developer regarding any deficiencies it has observed in the design, materials or workmanship of the Works relating to the Residential Units.
- 29.4 The Developer shall hold project meetings on site not less frequently than monthly intervals and shall give to DCC, DCC's Representative and the Technical Due Diligence Team at least five (5) Working Days' prior notice of site and other formal meetings of the Design Team and the Construction Contractor or any of them in connection with the Works in relation to the Residential Units allow DCC, DCC's Representative and/or the Technical Due Diligence Team (and any other technical advisors reasonably required by DCC to attend) to attend such meetings but are not obliged to attend.
- 29.5 The Developer will provide DCC, DCC's Representative and the Technical Due Diligence Team (and any other attendees at the project meetings) with copy minutes of all such project meetings. The Developer shall further procure that DCC, DCC's Representative and the Technical Due Diligence Team are given copies of any notices, architect's drawings, structural drawings and mechanical and electrical drawings and construction issue drawings and specifications, reports (including progress reports), certificates, programmes, time extension applications and other like items relevant to the Works relating to the Residential Units received from the Construction Contractor and the Design Team.
- 29.6 The Developer further agrees that it shall answer and deal promptly with all reasonable queries raised by or on behalf of DCC in relation to any matters arising under this Agreement.

**30. Tax Clearance – RCT**

- 30.1 As the Principal Contractor for RCT, DCC is the accountable person for VAT and will self-account for reverse charge VAT on the relevant payments made by it to the Developer.
- 30.2 Any payments to be made by the Parties under this Agreement are stated on a gross basis but the Parties may make any deduction or withholding on account of tax as is required under Chapter 2 of Part 18 of the Taxes Consolidation Act 1997. Where amounts have been withheld, the withholding tax paid over to the Irish Revenue shall be deemed a payment to the other party. The Party making the payment shall provide evidence (in the form of a deduction authorisation certificate which is issued by the Irish Revenue Commissioners) to the other party of the amount paid to the Irish Revenue.
- 30.3 The Party receiving any payment under this Agreement subject to any such deduction or withholding shall accept the net amount paid after deduction or withholding in discharge

of the liability under this Agreement to the same extent as if the deduction or withholding had not been made.

30.4 The Parties shall co-operate to ensure that all obligations arising under Chapter 2 of Part 18 of the Taxes Consolidation Act 1997 in respect of this Agreement are dealt with in a manner that endeavours not to cause tax difficulties for either party.

30.5 For the avoidance of doubt, the Parties may also make any deduction or withholding on account of tax as required by law, including any deduction or withholding which does not arise under requirements of law at the date of entering into this Agreement but which may arise at any future date under any circumstances

30.6 Any invoices issued by the Developer under this Agreement shall be VAT invoices in accordance with the provisions of the VAT Act. Where appropriate, the Developer shall not apply VAT to such invoices.

### **31. Set Off**

31.1 Notwithstanding any other provision of this Agreement whether expressed or implied, DCC shall be entitled to set off against or deduct from any money otherwise due to the Developer from DCC under this Agreement, any amount due to DCC from the Developer under this Agreement as assessed by DCC's Representative, acting reasonably (including in respect of any liability of DCC to a third party which the Developer is responsible for discharging and which remains unpaid for 5 (five) Working Days' after notice from DCC issued to the Developer requesting payment).

31.2 Any amount set off under the provisions of this clause is without prejudice to the rights of DCC or the Developer in any subsequent proceedings to seek to vary the amount claimed and set off by DCC under this clause.

### **32. No Mis-Description**

Without prejudice to the provisions of Clause 24, the Development Site is believed and shall be taken to be correctly described and shall be demised subject to any rights affecting the same and any error, omission or mistake discovered shall not annul this Agreement nor shall any compensation be allowed in respect thereof and no minor deviation from or minor variation of the Plans shall vitiate this Agreement.

### **33. Confidentiality**

33.1 The Developer and DCC hereby covenant and confirm with each other that they will keep confidential the contents of this Agreement and will not divulge to any third party the details thereof (other than to necessary professional advisers and in any proceedings issued or intended to be issued or as required by law).

33.2 Neither the Developer nor DCC shall make, or permit any person to make, any public announcement or communication concerning this Agreement without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed). The parties shall consult together on the timing, contents and manner of release of any announcement.

### **34. Entire Agreement**

34.1 The Developer agrees and accepts that no statement, measurement or description contained in any newspaper or other advertisement published by DCC, its servants or

agents, or any statement, description or measurement contained in any brochure or hand-out issued by DCC, its servants or agents in respect of the Development Site shall constitute a representation inducing the Developer to enter into this Agreement or any warranty forming part of this Agreement and that any statement description or measurement contained in any such particulars or in any verbal form given on behalf of DCC its servants or agents are for illustration purposes only and are not taken as matters of fact and that any mis-statement, mis-description or incorrect measurement given verbally or in form of any printed particulars by DCC its servants or agents, shall not give rise to any cause of action or claim for compensation against DCC or its servants or agents, or any right of rescission under this Agreement.

- 34.2 This Agreement contains the entire agreement between the parties hereto relating to the transactions hereby contemplated and all prior or contemporaneous agreements, understandings, representations and statements whether oral or written are merged herein.

### **35. Governing Law and Jurisdiction**

This Agreement shall in all respects be governed by and interpreted in accordance with the Laws of Ireland and DCC and the Developer hereby irrevocably agree that the Courts of Ireland are to have jurisdiction in all or any disputes which arise in connection with this Agreement and that accordingly any suit, action or proceedings arising out of or in connection this Agreement may be brought in such Courts.

### **36. Notices**

- 36.1 A notice given to or by a party under or in connection with this Agreement shall be in writing and in English and shall be signed by or on behalf of the party giving it.
- 36.2 Any notice to be served on the Developer shall be deemed to be well and sufficiently given if served by prepaid registered post addressed to the Developer at its registered offices and shall be deemed to have been delivered on the Working Day immediately following the date upon which it was posted.
- 36.3 It is hereby further agreed by the parties that any notice to be served on DCC shall be deemed to be well and sufficiently given if served by prepaid registered post addressed to the Chief Executive of DCC at the address shown in this Agreement or at such other address as DCC may inform the Developer in writing and shall be deemed to have been delivered on the Working Day immediately following the date on which it was posted.
- 36.4 A party may change its details for service of notices as specified in this clause by giving notice to the other party, provided that the address for service is an address in Ireland following any such change. Any change notified pursuant to this clause shall take effect at 9.00 am on the later of:
- (a) the Working Day (if any) specified in the notice as the effective date for the change; and
  - (b) five Working Days after deemed receipt of the notice of change.

### **37. Counterparts**

This Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

**IN WITNESS** whereof the parties hereto have executed this Agreement the day and year first herein **WRITTEN.**

**PRESENT** when the Common Seal  
of **DUBLIN CITY COUNCIL**  
was affixed hereto:

\_\_\_\_\_  
**Mayor/Deputy Mayor/Nominated employee of  
DUBLIN CITY COUNCIL**

DRAFT

**GIVEN** under the **COMMON SEAL** of  
**THE DEVELOPER**  
and **DELIVERED** as a **DEED**

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director/Secretary

DRAFT

**Appendix 1**

**PLANS**

DRAFT

**Appendix 2**

**Part 1**

Completion Standard for the Development

**Part 2**

Completion Standard for the Developer Units

**Part 3**

Completion Standard for the Residential Units

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### Appendix 3

#### Developer's Timetable

DRAFT

**Appendix 4**

Form of Development Bond

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## PERFORMANCE BOND

Bond No: [●]

Bond Amount: [●]

THIS BOND is made on [●]

### BETWEEN

1. [●]  
whose registered office is at [●] (**Developer/Contractor**)

2. [●]  
whose registered office is at [●] (**Surety**)

3. [●]  
whose registered office is at [●] (**Employer**)

### BACKGROUND

- A. The Employer and the [Developer/Contractor] have or will enter into a contract for: [●] <sup>7</sup>(the **Contract**)
- B. The [Developer/Contractor] has agreed to furnish a performance bond to the Employer.
- C. Terms defined in the Contract have the same meaning in this Bond.
- D. The Surety is an [●insurance undertaking●], incorporated in [●Ireland●] having its registered office at [●] and authorised by [the Central Bank of Ireland] to issue performance bonds in Ireland, and has a financial security rating of Standard & Poors A or equivalent.<sup>8</sup>

### IT IS AGREED AS FOLLOWS:

1. If the [Developer/Contractor]'s obligation to complete the Works is terminated under Clause [●]<sup>9</sup> of the Contract, the Surety will, subject to this Bond, pay the Employer any amount for which the [Developer/Contractor] is liable under Clause [●] of the Contract.
2. If the [Developer/Contractor] breaches the Contract the Surety will, subject to this Bond, pay the Employer any amount for which the [Developer/Contractor] is liable to the Employer as damages for breach of the Contract, as established under (or by reference to the relevant provisions of) the Contract, taking into account all sums due to the [Developer/Contractor] under the Contract.
3. In respect of any claim under the Bond notified to the Surety prior to the date of issue of the

---

<sup>7</sup> Insert Contract details

<sup>8</sup> Confirm required rating and any other pre-conditions with client.

<sup>9</sup> Insert relevant termination provision(s)

Certificate of Practical Completion, the liability of the Surety under this Bond will not exceed [●]. This amount will be reduced by half on issue of the Certificate of Practical Completion of the Works under the Contract in respect of any claim under the Bond notified to the Surety after the date of such issue.

4. No alteration in the Contract or in the extent or nature of the works to be done under it, and no allowance of time under the Contract, and no forbearance or forgiveness concerning the Contract by the Employer, will in any way release the Surety from liability under this Bond.
5. The Surety will be released from its liability under this Bond 450 days after the Certificate of Practical Completion of the Works has been issued, except in relation to any breach by the [Developer/Contractor] or termination that has occurred before that date, written notice (including particulars of the breach or termination) of which has been given to the Surety earlier than 4 weeks after this expiry date.
6. The [Developer/Contractor] undertakes to the Surety to perform its obligations under the Contract. This undertaking does not limit any rights or remedies of the Employer or the Surety.
7. The Employer may, but is not required to, provide to the Surety a copy of any notice that the Employer gives to or receives from the [Developer/Contractor] under Clause [●]<sup>10</sup> of the Contract.
8. The decision of a court or arbitrator in a dispute between the Employer and the [Developer/Contractor] will be binding on the Surety as to all matters concerning a breach of the Contract, termination under the Contract and the [Developer/Contractor]'s liability.
9. The Surety shall not be discharged from any liability under this Bond due to:
  - (a) the insolvency, winding up, dissolution, receivership, examination, administration, incapacity, re-organisation or any analogous proceedings relating to the [Developer/Contractor]; or
  - (b) any change in the status, function, control or ownership of the [Developer/Contractor]; or
  - (c) any invalidity, unenforceability or illegality of:
    - (i) the whole or any part of the Contract; or
    - (ii) the rights of either the Employer or the [Developer/Contractor] under the Contract; or
    - (iii) or any assignment of the benefit of the Contract; or
  - (d) any other circumstances, act, event, omission or provision of statute or law or otherwisewhich but for this clause might operate to discharge, impair or otherwise affect any of the obligations of the Surety under this Bond or by law shall in anyway release, reduce or affect the liability of the Surety under this Bond.
10. If the Surety is called on to pay the Employer's loss following a termination under Clause [18.1] of the Contract, the Surety may suggest a completion contractor to the Employer, provided the proposed completion contractor is acceptable to the Employer.
11. The Surety will not be liable under this Bond for a breach or termination caused solely and directly

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<sup>10</sup> Insert relevant Clause number  
12117569.14

by war, invasion, act of foreign enemies, hostilities (whether war is declared or not), terrorism, civil war, rebellion, revolution or military or usurped power.

12. The Employer may assign the benefit of this Bond, without the Surety's or the [Developer/Contractor]'s consent, on written notice to the Surety.
13. This Bond is governed by and construed according to Irish law and the parties submit to the jurisdiction of the Irish courts to determine all matters concerning it.
14. Money payable by the Surety under this bond will be paid in euro in Ireland.
15. The Surety appoints:-

*Name of Agent:*

*Address of Agent:*

as its agent for service of legal proceedings. The Surety confirms that the named agent has been irrevocably appointed and the failure of the agent to notify the Surety of receipt of a document will not invalidate any proceedings or the service of the document.<sup>11</sup>

---

<sup>11</sup> An address in Ireland is required when the Surety does not have a registered office in Ireland  
12117569.14

**GIVEN UNDER THE [DEVELOPER/CONTRACTOR]'S COMMON SEAL<sup>12</sup>**

Affix [Developer/Contractor]'s common seal

Signatories of persons authorised  
to authenticate the seal

OR

**SIGNED SEALED AND DELIVERED BY**

Name of Attorney

Signature of Attorney

As lawful Attorney of the [Developer/Contractor] under a power of attorney dated

Affix Attorney's personal seal

In the presence of:

---

<sup>12</sup> If the [Developer/Contractor] is not incorporated in Ireland, execution will be in accordance with the law of the jurisdiction of incorporation for execution in Ireland

**GIVEN UNDER THE SURETY'S COMMON SEAL<sup>13</sup>**

Affix Surety's common seal

Signatories of persons authorised  
to authenticate the seal

OR

**SIGNED SEALED AND DELIVERED BY**

Name of Attorney

Signature of Attorney

As lawful Attorney of the Surety under a power of attorney dated

Affix Attorney's personal seal

Name of witness

Signature of witness

Witness's occupation

Witness's address

---

<sup>13</sup> If the Surety is not incorporated in Ireland, execution will be in accordance with the law of the jurisdiction of incorporation for execution in Ireland

**GIVEN UNDER THE EMPLOYER’S COMMON SEAL<sup>14</sup>**

Affix Employer’s common seal

Signatories of persons authorised  
to authenticate the seal

OR

**SIGNED SEALED AND DELIVERED BY**

Name of Attorney

Signature of Attorney

As lawful Attorney of the Employer under a power of attorney dated

Affix Attorney’s personal seal

In the presence of:

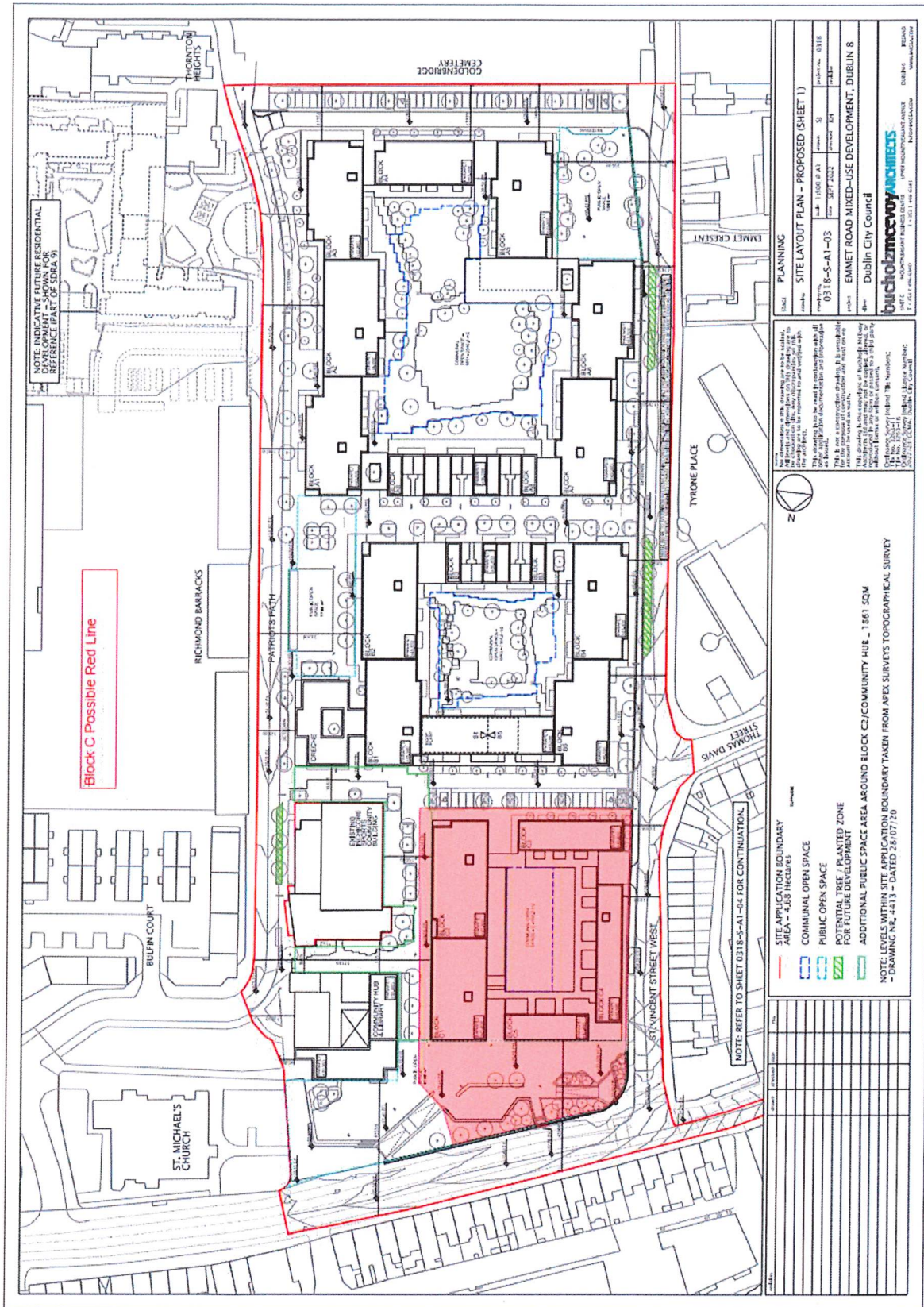
■

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<sup>14</sup> If the Employer is not incorporated in Ireland, execution will be in accordance with the law of the jurisdiction of incorporation for execution in Ireland

**Appendix 5**  
Maps

DRAFT



**Note :**

No dimensions on this drawing are to be scaled. All levels and dimensions on this drawing are to be checked on site. Any discrepancies on this drawing are to be reported to and verified with the architect.

This drawing is to be read in conjunction with all other application documentation and information as issued.

This is not a construction drawing, it is unsuitable for the purpose of construction and must on no account be used as such.

This drawing is the copyright of Bucholz McEvoy Architects Ltd and may not be copied, altered, or reproduced in any form or passed to a third party without license or written consent.

All extracts from ordinance survey file ref: 3263-11, 3263-16

Copyright: Ordnance Survey Ireland

**Occupancy:**

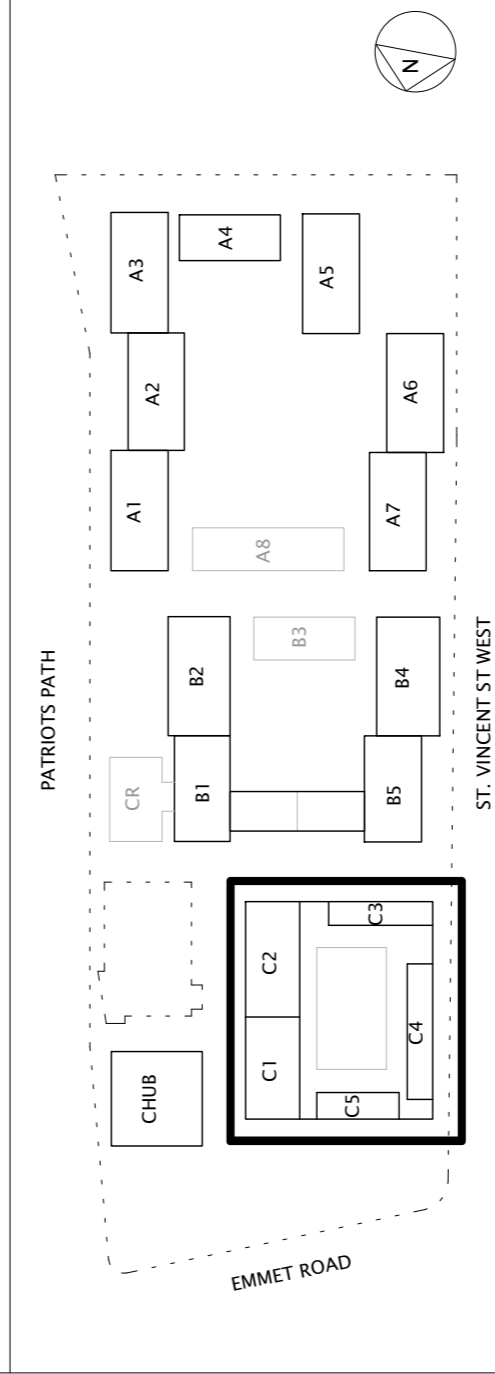
- STUDIO
- 1 BED
- 2 BED
- 3 BED

**MAP 2**

Back of house / layout and off licence area for retail element to be agreed post planning

- R1 Roof type 1 - Flat Roof
- R2 Roof type 2 - Extensive green roof system
- R3 Roof type 3 - Intensive green / off roof system with terrace
- R4 Roof type 4 - Intensive green / off roof system with terrace
- R5 Roof type 5 - Intensive green roof system with PV Panels over
- R6 Roof type 6 - Roof Deck / Terrace
- R7 Roof type 7 - Roof Terrace

Please refer to Roof Plan 0318-C-A2-07 for parapet levels and complete key to all elevation/section drawings



**PLANNING**

| revision | date | no. |
|----------|------|-----|
|          |      |     |
|          |      |     |
|          |      |     |
|          |      |     |
|          |      |     |
|          |      |     |

drawing

**BLOCK C - COMMERCIAL MIXED USE - GROUND FLOOR PLAN**

drawing no. 0318-C-A2-00 scale 1 : 200 @ A1 drawn SJ/MA project no. 0318

date SEPT 2022 checked KH revision

project

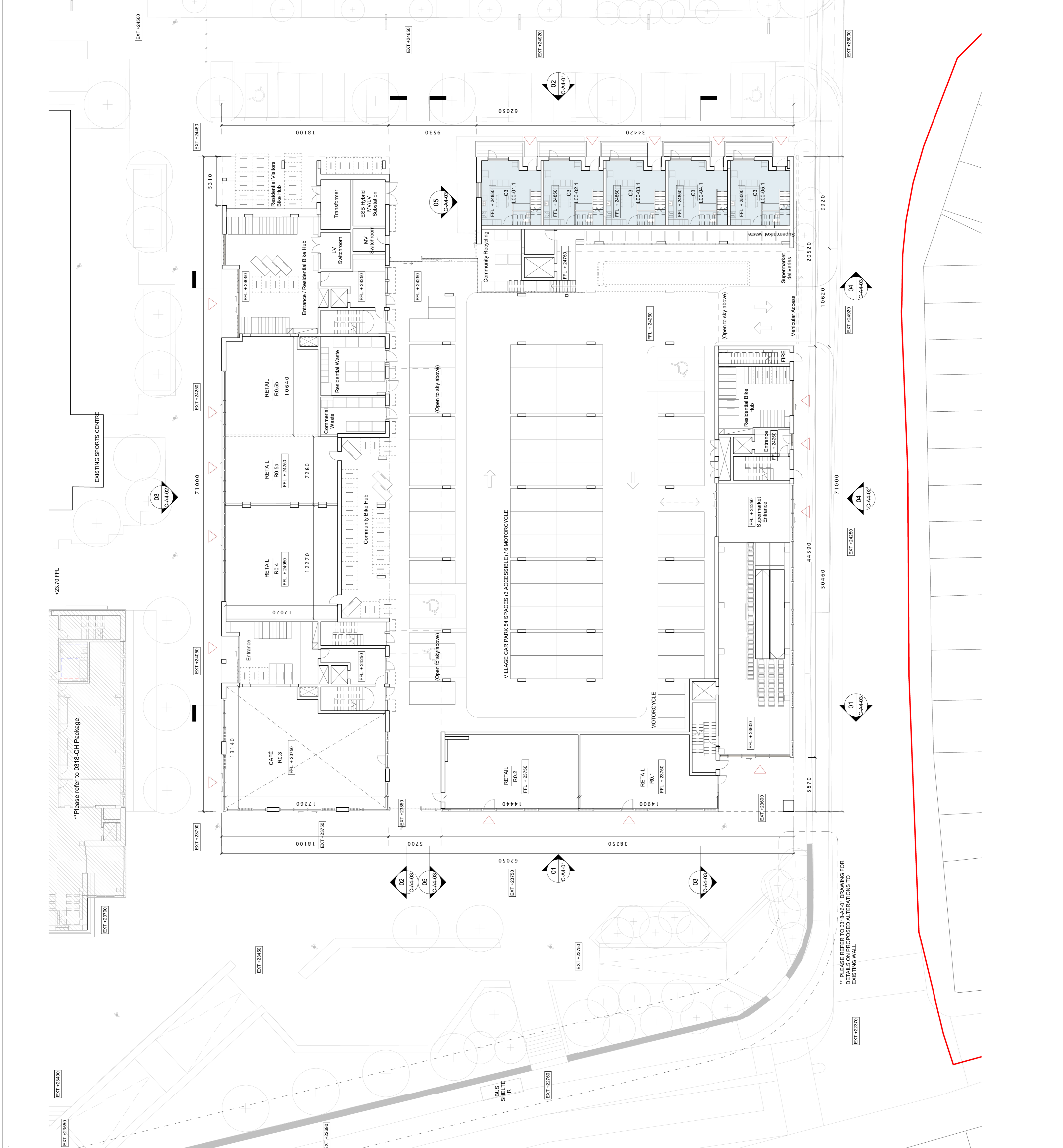
**EMMET ROAD MIXED-USE DEVELOPMENT, DUBLIN 8**

client

DUBLIN CITY COUNCIL

**bucholzmcEvoyARCHITECTS**

UNIT C MOUNTPLEASANT BUSINESS CENTRE UPPER MOUNTPLEASANT AVENUE DUBLIN 6 IRELAND  
 T +353 1 496 6340 F +353 1 496 6341 INFO@BMCEA.COM WWW.BMCEA.COM



\*\* PLEASE REFER TO 0318-A6-01 DRAWING FOR EXISTING WALL PROPOSED ALTERATIONS TO EXISTING WALL



**Appendix 6**

NOT USED

**Appendix 7**

Form of Building Contract

## Appendix 8

Form of Appointment for Project Supervisor Construction Stage

### FORM OF APPOINTMENT OF PROJECT SUPERVISOR CONSTRUCTION STAGE

**This Agreement** is made on the.....day of....., 20.....

#### BETWEEN

1. ...., a company incorporated in Ireland with registration number ....., having its registered office at ..... (the "Client) and
2. ...., a company incorporated in.....with registration number.....and its registered office is at.....  
... ("Project Supervisor")

#### BACKGROUND

- A. By a contract dated [ ] (the "Contract") the Client has appointed the Project Supervisor as building contractor for the [.....] (**Project**).
- B. This Agreement is collateral to the Contract.

#### It Is Agreed As Follows:

1. The Client appoints the Project Supervisor as project supervisor for the construction stage according to the Safety, Health and Welfare (Construction) Regulations 2013, and any amendment to them (the Construction Regulations) for the Project.
2. The Project Supervisor's appointment continues for as long as, under the Construction Regulations, the Client is required to have a project supervisor for the construction stage for the Project, unless the appointment is terminated earlier.
3. The Project Supervisor accepts the appointment.
4. The Project Supervisor shall perform all of its duties under the Construction Regulations as project supervisor for the construction stage for the Project.
5. The Project Supervisor represents and warrants to the Client that the Project Supervisor is and will continue to be a competent person to carry out its duties under this Agreement and the Construction Regulations and has allocated and will allocate sufficient resources to enable itself to comply with the requirements and prohibitions imposed on the Project Supervisor by this Agreement and under the relevant statutory provisions. In this Agreement, **competent person** and **relevant statutory provisions** are construed according to section 2 of the Safety, Health and Welfare at Work Act 2005, and any amendment to it.

6. The Project Supervisor represents and warrants to the Client that the time allowed by the Contract for the completion of the works under the Contract is appropriate and sufficient to enable the Project Supervisor to perform its duties under this Agreement and the Construction Regulations.
7. The Project Supervisor represents and warrants to the Client that any information provided by the Client to the Project Supervisor about the state or condition of the Site (as defined in the Contract) and any premises on it is appropriate and sufficient to enable the Project Supervisor to perform its duties under this Agreement and the Construction Regulations.
8. The Project Supervisor shall ensure that it is insured by insurances in the same terms as the insurances the Project Supervisor is required to have under the Contract, and that those insurances comply with all the requirements of the Contract, and are kept in force for the same period as required by the Contract, and include cover for death or injury resulting from the Project Supervisor's performance or non-performance of its duties under this Agreement and the Construction Regulations.
9. Payment for the Project Supervisor's service is provided for under the Contract. Accordingly, the Client is not liable under this Agreement for the Project Supervisor's fees or expenses.
10. If the Project Supervisor breaches its obligations or warranties under this Agreement, or if the Contract is terminated, the Client may terminate the Project Supervisor's appointment under this Agreement.
11. Without limiting its obligations under the Construction Regulations, the Project Supervisor shall give the Client all documents it prepares in the course of and for the purpose of performing its duties under this Agreement (**Project Supervisor's Documents**). If the Project Supervisor's appointment under this Agreement terminates, the Project Supervisor shall give all Project-Supervisor's Documents to the Client immediately. Ownership of and copyright in the Project Supervisor's Documents shall become the Client's when the Project Supervisor delivers them to the Client, or the appointment is terminated, whichever is earlier. The Project Supervisor shall indemnify the Client against any liability resulting from the use or copying of the Project Supervisor's Documents infringing the property (including intellectual property) rights of any person.
12. This Agreement is governed by and construed according to Irish law. The parties submit to the Jurisdiction of the Irish Courts in relation to all matters concerning it.

**Signed** on behalf of *the Client*

\_\_\_\_\_ (signature of authorised person)

In the presence of

\_\_\_\_\_ (signature of witness)

\_\_\_\_\_ (name of witness)

\_\_\_\_\_ (witness occupation)

\_\_\_\_\_ (witness' address)

**Signed** on behalf of *the Project Supervisor*

\_\_\_\_\_ (signature of authorised person)

In the presence of

\_\_\_\_\_ (signature of witness)

\_\_\_\_\_ (name of witness)

\_\_\_\_\_ (witness occupation)

\_\_\_\_\_ (witness' address)

## Appendix 8

Form of Appointment for Project Supervisor Design Process

### FORM OF APPOINTMENT OF PROJECT SUPERVISOR DESIGN PROCESS

**This Agreement** is made on the.....day of....., 20

#### BETWEEN

1. [.....] (Company Number [.....]) having its registered office at [.....] (the "Client) and
2. [.....], a company incorporated in.....with registration number..... and its registered office is at..... ("Project Supervisor")

#### BACKGROUND

- A. By a contract dated [ ] (the "Contract") the Client has appointed the Project Supervisor as consultant for the [.....] (the "Project").
- B. This Agreement is collateral to the Contract.

#### It Is Agreed As Follows:

1. The Client appoints the Project Supervisor as project supervisor for the design process according to the Safety, Health and Welfare (Construction) Regulations 2013, and any amendment to them (the Construction Regulations) for the Project.
2. The Project Supervisor's appointment continues for as long as, under the Construction Regulations, the Client is required to have a project supervisor for the design process for the Project, unless the appointment is terminated earlier.
3. The Project Supervisor accepts the appointment.
4. The Project Supervisor shall perform all of its duties under the Construction Regulations as project supervisor for the design process for the Project.
5. The Project Supervisor represents and warrants to the Client that the Project Supervisor is and will continue to be a competent person to carry out its duties under this Agreement and the Construction Regulations and has allocated and will allocate sufficient resources to enable itself to comply with the requirements and prohibitions imposed on the Project Supervisor by this Agreement and under the relevant statutory provisions. In this Agreement, **competent person** and **relevant statutory provisions** are construed according to section 2 of the Safety, Health and Welfare at Work Act 2005, and any amendment to it.
6. The Project Supervisor represents and warrants to the Client that the time allowed by the Contract for the completion of the works under the Contract is appropriate and sufficient to enable the Project Supervisor to perform its duties under this Agreement and the Construction Regulations.

7. The Project Supervisor represents and warrants to the Client that any information provided by the Client to the Project Supervisor about the state or condition of the Site (as defined in the Contract) and any premises on it is appropriate and sufficient to enable the Project Supervisor to perform its duties under this Agreement and the Construction Regulations.
8. The Project Supervisor shall ensure that it is insured by insurances in the same terms as the insurances the Project Supervisor is required to have under the Contract, and that those insurances comply with all the requirements of the Contract, and are kept in force for the same period as required by the Contract, and include cover for death or injury resulting from the Project Supervisor's performance or non-performance of its duties under this Agreement and the Construction Regulations.
9. Payment for the Project Supervisor's service is provided for under the Contract. Accordingly, the Client is not liable under this Agreement for the Project Supervisor's fees or expenses.
10. If the Project Supervisor breaches its obligations or warranties under this Agreement, or if the Contract is terminated, the Client may terminate the Project Supervisor's appointment under this Agreement.
11. Without limiting its obligations under the Construction Regulations, the Project Supervisor shall give the Client all documents it prepares in the course of and for the purpose of performing its duties under this Agreement (**Project Supervisor's Documents**). If the Project Supervisor's appointment under this Agreement terminates, the Project Supervisor shall give all Project-Supervisor's Documents to the Client immediately. Ownership of and copyright in the Project Supervisor's Documents shall become the Client's when the Project Supervisor delivers them to the Client, or the appointment is terminated, whichever is earlier. The Project Supervisor shall indemnify the Client against any liability resulting from the use or copying of the Project Supervisor's Documents infringing the property (including intellectual property) rights of any person.
12. This Agreement is governed by and construed according to Irish law. The parties submit to the Jurisdiction of the Irish Courts in relation to all matters concerning it.

**Signed** on behalf of *the Client*

\_\_\_\_\_ (signature of authorised person)

In the presence of

\_\_\_\_\_ (signature of witness)

\_\_\_\_\_ (name of witness)

\_\_\_\_\_ (witness occupation)

\_\_\_\_\_ (witness' address)

**Signed** on behalf of *the Project Supervisor*

\_\_\_\_\_ (signature of authorised person)

In the presence of

\_\_\_\_\_ (signature of witness)

\_\_\_\_\_ (name of witness)

\_\_\_\_\_ (witness occupation)

\_\_\_\_\_ (witness' address)

**Appendix 9**

Form of Deed of Assurance

**Appendix 10**

Appointment of Assigned Certified and Design Certifier

**Appendix 11**

Form of Collateral Warranty for Construction Contractor



**HFA**

An Ghníomhaireacht  
Airgeadais Tithíochta  
Housing Finance Agency

**CONTRACTOR'S COLLATERAL WARRANTY**

**[CONTRACTOR]**

and

**[DEVELOPER]<sup>15</sup>**

and

**HOUSING FINANCE AGENCY PUBLIC LIMITED COMPANY**

relating to

**[[ insert number of units ] units at [ insert name of Development ]]**

---

<sup>15</sup> Developer only a party for Development Finance Schemes.  
12117569.14

**PARTICULARS**

|    |  |  |
|----|--|--|
| A. | Type of finance being provided by the Housing Finance Agency | <p>Please select with an 'x' the box next to the applicable option below:</p> <p>The HFA is:</p> <p>a) providing funding for completed units <input type="checkbox"/></p> <p>b) providing funding in respect of the design and construction of the units <input type="checkbox"/></p> <p>If an 'x' has been inserted in option a), for the purposes of this Agreement, the development is an "<b>Acquisition Finance Scheme</b>" and Clause 6 shall be excluded from and have no effect under this Agreement.</p> <p>If an 'x' has been inserted in option b) then for the purposes of this Agreement, the development is a "<b>Development Finance Scheme</b>".</p>   |
| B. | "Approved Housing Body"                                      | means <input type="text"/> with registered company number <input type="text"/> and having its registered office at <input type="text"/> .  |
| C. | Background   | <p>For a <b>Development Finance Scheme</b>, the following background applies:</p> <p>(A) the Approved Housing Body and the Developer have entered into the Developer and AHB Agreement for the Developer to carry out and complete the construction of the Development and for the Approved Housing Body to pay the Developer for performance of its obligations under the Developer and AHB Agreement;</p> <p>(B) the Developer has engaged the Contractor under the Main Contract for the Contractor to provide the Works; and</p> <p>(C) the HFA is providing funding to the Approved Housing Body for the Development.</p> <p>For an <b>Acquisition Finance Scheme</b>, the following background applies:</p> <p>(A) the Approved Housing Body and the Developer have entered into the Developer and AHB Agreement for the sale of the Development;</p> <p>(B) the Developer has engaged the Contractor under the Main Contract for the Contractor to provide the Works; and</p> <p>(C) the HFA is providing funding to the Approved Housing Body for purchase of the Development or part thereof.</p> |

|    |                               |  |
|----|-------------------------------|--|
| D. | “Contractor”                  | <p>means [insert legal entity name of Contractor] with registered company number [ • ] and having its registered office at [Insert Address]; or</p> <p>if the Contractor is not a registered company, please insert details:</p>   |
| E. | Design                        | <p>Please select with an ‘x’ the box next to the applicable option below:</p> <p>The Contractor is:</p> <p>a) carrying out design in relation to the Works [ ]</p> <p>b) not carrying out design in relation to the Works [ ]</p> <p>If an ‘x’ has been inserted in option a) then for the purposes of this Agreement, the Contractor is required to maintain the Professional Indemnity Insurance below in Particular L and Clause 2 shall apply.</p> <p>If an ‘x’ has been inserted in option b), for the purposes of this Agreement, the Contractor is not required to maintain the Professional Indemnity Insurance below in Particular L. Clause 2 is hereby removed from and will have no effect under this Agreement.</p> |
| F. | “Developer”                   | <p>means [Insert legal entity name of Developer] with registered company number [ • ] and having its registered office at [Insert Address].</p> <p>if the Developer is not a registered company, please insert details:</p>  |
| G. | “Developer and AHB Agreement” | <p>means the agreement between the Approved Housing Body and the Developer dated [insert date of the development agreement / or contract for sale – as applicable] as more particularly described in the Background.</p>   |
| H. | “Development”                 | <p>means [Insert description of the Development] and all ancillary and associated works and services.</p>  |
| I. | “Law”                         | <p>means any law applicable in Ireland (without further enactment), common law, civil code, statute, statutory instrument, proclamation, byelaw, directive, decision, regulation, rule, order, notice, code of practice, code of conduct, rule of court, instruments, or delegated or subordinate legislation.</p>   |

| J.                                       | <b>“Main Contract”</b>  | means the agreement between the Developer and the Contractor for the carrying out and construction of the Works dated [insert date of the Main Contract].  |  |   |   |                      |                                 |                                 |                          |                                 |                                   |                           |                                 |                                 |                  |                                   |                                   |
|--|---|--|--|---|---|----------------------|---------------------------------|---------------------------------|--------------------------|---------------------------------|-----------------------------------|---------------------------|---------------------------------|---------------------------------|------------------|-----------------------------------|-----------------------------------|
| K.                                       | <b>“Practical Completion”</b>                                     | means: <ul style="list-style-type: none"> <li>a) for Acquisition Finance Schemes, the date of completion of the sale under the Developer and AHB Agreement; or</li> <li>b) for Development Finance Schemes, the date of practical completion or equivalent under the Developer and AHB Agreement.</li> </ul>   |  |   |   |                      |                                 |                                 |                          |                                 |                                   |                           |                                 |                                 |                  |                                   |                                   |
| L.                                       | <b>“Professional Indemnity Insurance “</b>                        | <p>Means an amount of not less than € [Insert amount of professional indemnity insurance ] for each and every claim</p> <p>See below guidance on the HFA requirements for professional indemnity insurance.</p> <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th style="background-color: yellow;">HFA Loan Amount (for the overall Scheme)</th> <th style="background-color: yellow;">Schemes that include apartments- Minimum indemnity level required</th> <th style="background-color: yellow;">Schemes that do not include any apartments - Minimum indemnity level required</th> </tr> </thead> <tbody> <tr> <td>Less than €3 million</td> <td>€1 million each and every claim</td> <td>€1 million each and every claim</td> </tr> <tr> <td>€3 million to €5 million</td> <td>€3 million each and every claim</td> <td>€2.5 million each and every claim</td> </tr> <tr> <td>€5 million to €10 million</td> <td>€5 million each and every claim</td> <td>€4 million each and every claim</td> </tr> <tr> <td>Over €10 million</td> <td>€6.5 million each and every claim</td> <td>€6.5 million each and every claim</td> </tr> </tbody> </table> | HFA Loan Amount (for the overall Scheme) | Schemes that include apartments- Minimum indemnity level required | Schemes that do not include any apartments - Minimum indemnity level required | Less than €3 million | €1 million each and every claim | €1 million each and every claim | €3 million to €5 million | €3 million each and every claim | €2.5 million each and every claim | €5 million to €10 million | €5 million each and every claim | €4 million each and every claim | Over €10 million | €6.5 million each and every claim | €6.5 million each and every claim |
| HFA Loan Amount (for the overall Scheme) | Schemes that include apartments- Minimum indemnity level required | Schemes that do not include any apartments - Minimum indemnity level required  |  |   |   |                      |                                 |                                 |                          |                                 |                                   |                           |                                 |                                 |                  |                                   |                                   |
| Less than €3 million                     | €1 million each and every claim                                   | €1 million each and every claim  |  |   |   |                      |                                 |                                 |                          |                                 |                                   |                           |                                 |                                 |                  |                                   |                                   |
| €3 million to €5 million                 | €3 million each and every claim                                   | €2.5 million each and every claim  |  |   |   |                      |                                 |                                 |                          |                                 |                                   |                           |                                 |                                 |                  |                                   |                                   |
| €5 million to €10 million                | €5 million each and every claim                                   | €4 million each and every claim  |  |   |   |                      |                                 |                                 |                          |                                 |                                   |                           |                                 |                                 |                  |                                   |                                   |
| Over €10 million                         | €6.5 million each and every claim                                 | €6.5 million each and every claim  |  |   |   |                      |                                 |                                 |                          |                                 |                                   |                           |                                 |                                 |                  |                                   |                                   |
| M.                                       | <b>“Term”</b>   | means: <ul style="list-style-type: none"> <li>a) where the Works relate to apartments, the period from the commencement of the Works up to and including the day that is twelve (12) years from Practical Completion; or</li> <li>b) if paragraph a) above does not apply, the period from the commencement of the Works up to and including the day that is six (6) years from Practical Completion.</li> </ul>   |  |   |   |                      |                                 |                                 |                          |                                 |                                   |                           |                                 |                                 |                  |                                   |                                   |
| N.                                       | <b>“Works”</b>  | means [Insert Description of the Works] for the Development.   |  |   |   |                      |                                 |                                 |                          |                                 |                                   |                           |                                 |                                 |                  |                                   |                                   |

**THIS AGREEMENT IS DATED** \_\_\_\_\_

**BETWEEN:**

- (1) the Contractor;
- (2) the Developer<sup>16</sup>; and
- (3) **HOUSING FINANCE AGENCY PUBLIC LIMITED COMPANY** with registered company number 87513 and having its principal office at 46 Saint Stephen's Green, Dublin 2, D02 WK60 (the "**HFA**").

**IT IS HEREBY AGREED** in consideration of the payment of ten euro (€10.00) by the HFA to the Contractor (receipt and sufficiency of which the Contractor acknowledges):

**1. COMPLY WITH MAIN CONTRACT AGREEMENT**

1.1 The Contractor hereby warrants to and undertakes with the **HFA** that:

- (a) in the performance of the Works and in carrying out the Main Contract it has:
  - (i) exercised and will continue to exercise the standard of skill, care and diligence reasonably to be expected of properly qualified persons providing works, services or supply comparable in value, size, scope, complexity and quality to that required under the Main Contract, having regard to the nature and timescale of the Works and the Development; and
  - (ii) used good and proper materials and the workmanship has been carried out in compliance with all applicable law, such that the Works when practically complete are fit for use as residential accommodation.
- (b) it has not broken and shall not break any express or implied term of the Main Contract.

1.2 The Contractor hereby undertakes and warrants to the HFA that it has not and will not use materials or substances:

- (a) which are not in accordance with current Irish standards, European standards and any codes of practice known or ought reasonably to have been known to the Contractor insofar as they may be applicable, or
- (b) known to be deleterious to health or safety or the durability or suitability of any such project in the particular circumstances in which same is used.

**1. INSURANCE**

1.1 The Contractor warrants to and undertakes with the HFA that it shall take out and maintain professional indemnity insurance in accordance with the applicable requirements in Part L of the Particulars for a period from the commencement of the Works to a date no earlier than the expiry of the Term.

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<sup>16</sup> Applicable for Development Finance Schemes only – can be deleted for Acquisition Finance Schemes.  
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- 1.2 The insurance required under Clause 2.1 shall be written by reputable and well-established insurers lawfully carrying on insurance business in the EU or in the United Kingdom provided it has the necessary regulatory authorisations to underwrite insurance in Ireland.
- 1.3 The Contractor shall notify the HFA in writing immediately on becoming aware of:
- (a) the cancellation, non-renewal, or reduction in cover available to the Contractor; or
  - (b) the cover no longer being available to the Contractor at commercially reasonable rates,
- and in any such circumstances the Contractor shall take out and maintain the best professional indemnity insurance that is available in the insurance market within the EU or United Kingdom at commercially reasonable rates until such time as the cover required by Clause 2.1 is available at commercially reasonable rates at which point the Contractor shall immediately take out and maintain such cover.
- 1.4 As and when reasonably requested by the HFA, the Contractor shall produce for inspection documentary evidence that the insurance required by Clause 2.1 has been taken out and is being maintained as so required.
- 1.5 If the Contractor shall at any time fail to take out or maintain the insurance required under Clause 2.1 or, if applicable, 2.3, the HFA may take out and maintain such insurance as the HFA may in its discretion consider reasonable to protect its interest and the Contractor shall pay to the HFA the amount of all costs and expenses properly incurred by the HFA in so doing.
- 1.6 The policy shall not include terms or conditions to the effect that the Contractor must discharge any liability before being able to recover from the insurers.

## 2. **COPYRIGHT AND INTELLECTUAL PROPERTY**

- 2.1 The copyright in all designs, drawings, reports, specifications, bills of quantities, consents, papers and other similar documents produced by the Contractor in connection with any Works (the “**Documents**”) shall remain vested in the Contractor but the HFA shall have a perpetual non-exclusive irrevocable and assignable royalty free licence to reproduce, copy and use the Documents for all purposes connected with the Works and to any works related to future maintenance and alteration work. The Contractor shall not be liable for the use of any of the Documents for any purpose other than that for which they were prepared and/or provided.
- 2.2 The HFA shall be entitled (at its own cost) to full and proper copies of the Documents in the possession or control of the Contractor and the Contractor will not claim copyright or a lien in respect of them against the HFA.
- 2.3 The licence granted to the HFA under this Clause 3 shall include a right for the HFA to grant sub-licences.
- 2.4 The Contractor shall indemnify the HFA from any claims brought by a third party against the HFA for any alleged breach or infringement of any intellectual property rights in the Documents or arising out of or in connection with the Works.

## 3. **ASSIGNMENT**

The benefit of this Agreement and/or any of the present or future rights interests and/ or benefits of the HFA hereunder may be assigned on two (2) occasions without the consent of the Contractor and thereafter with the prior written consent of the Contractor (such consent not to be unreasonably withheld or delayed) provided that no restriction whatsoever shall apply to any assignment to an affiliate of the HFA or to any assignment or charge in favour of any funder, bank or financial institution. The HFA shall give the Contractor prompt notice of any such assignment by it provided always that the giving of such notice shall not be a precondition to the effectiveness of any assignment.

## **5. NOTICES**

Any notice provided for in accordance with this Agreement shall be deemed to be duly given if delivered by hand or sent by registered post to the party named therein at the address of such party shown in this Agreement or such other address as such party may by notice in writing nominate for the purpose of service and if sent by registered post or delivered by hand shall be deemed to have been received when delivered.

## **6. STEP-IN**

**6.1** The Contractor will, if so required by notice in writing given by the HFA, accept the instruction of the HFA or the HFA's nominee to the exclusion of the Developer in respect of the carrying out and completion of any Works upon the terms and conditions of the Main Contract (whereupon all the rights and obligations of the Developer under the Main Contract shall thereafter be performed and exercisable by the HFA or its nominee). The Contractor shall not be in breach of the Main Contract by complying with the obligations imposed on it by this Clause.

**6.2** The Contractor will not without first giving the HFA not less than twenty one days prior notice in writing (accompanied by all of the information referred to in sub-clause 6.3 below) exercise or seek to exercise any right it may have to determine its employment under the Main Contract or to treat the same as having been repudiated by the Developer or to discontinue or suspend the performance of any duties or works to be performed by the Contractor pursuant thereto. The Contractor's right to determine its employment under the Main Contract, to treat the same as having been repudiated or to suspend or to discontinue performance shall cease if within twenty one days of receipt of such notice the HFA shall give notice in writing to the Contractor requiring the Contractor to accept the instruction of the HFA or its nominee to the exclusion of the Developer in respect of the carrying out and completion of the Works upon the terms and conditions of the Main Contract (whereupon all the rights and obligations of the "Developer" under the Main Contract shall thereafter be performed and exercisable by the HFA or its nominee).

**6.3** Following a notice under sub clause 6.1 or sub-clause 6.2 (as applicable), the Contractor shall, if so required by the HFA at any time, provide the HFA with particulars in writing of the amounts paid to the Contractor under the Main Contract, particulars of amounts due and unpaid to the Contractor, particulars of amounts remaining to be paid to the Contractor under the Main Contract but not yet due, and any information requested by the HFA that is relevant to these amounts. All such information shall be provided within five (5) business days from the date of request.

**6.4** In the event of a step-in under sub-clause 6.1 or sub-clause 6.2 (as applicable), any sums properly due and payable to the Contractor under the terms of the Main Contract that are unpaid prior to the date of service of the notice by the HFA under sub-clause 6.1 or sub-clause 6.2 shall be payable by the HFA, provided always that the HFA's liability shall not exceed any amounts notified to the HFA pursuant to sub-clause 6.3.

## **7. AMENDMENT OF THE MAIN CONTRACT**

Save for any variation to the Works as may be permitted by the Main Contract, the Contractor shall not make any amendment, variation, supplement and/ or novation of or to the Main Contract and/ or agree to any release and/ or waiver by the Developer of any term, provision and/ or condition of the Main Contract without the prior written consent of the HFA.

**8. GOVERNING LAW AND JURISDICTION**

This Agreement shall be governed by, and construed in accordance with, the laws of Ireland and the parties irrevocably submit to the jurisdiction of the Irish Courts.

**9. COUNTERPARTS**

This Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

**IN WITNESS WHEREOF** the parties have affixed their Seals the day and date first hereinbefore written.

**GIVEN** under the **COMMON SEAL**  
of **THE CONTRACTOR:**

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director/Secretary

**GIVEN** under the **COMMON SEAL**  
of **THE DEVELOPER**<sup>17</sup>:

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director/Secretary

\_\_\_\_\_  
<sup>17</sup> Applicable for Development Finance Schemes only – can be deleted for Acquisition Finance Schemes.  
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**GIVEN** under the **COMMON SEAL**  
of **THE HOUSING FINANCE AGENCY PLC:**

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Authorised Signatory

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Authorised Signatory  
/Company Secretary

## **Appendix 12**

### Forms of Collateral Warranties for Design Team



## CONSULTANT'S COLLATERAL WARRANTY

**[CONSULTANT]**

and

**[DEVELOPER]<sup>18</sup>**

and

**HOUSING FINANCE AGENCY PUBLIC LIMITED COMPANY**

relating to

**[[ insert number of units ] units at [ insert name of Development ]]**

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<sup>18</sup> Developer only a party for Development Finance Schemes.  
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**PARTICULARS**

|   |  |  |
|---|--|--|
| A | Type of units  | <p>Are there apartments included in the Development? If not, then insert an 'x' in the below box:</p> <p style="text-align: center;">[            ]</p> <p>If an 'x' has been inserted, then 'No Apartments' shall apply.</p>  |
| B | Type of finance being provided by the Housing Finance Agency | <p>Please select with an 'x' the box next to the applicable option below:</p> <p>Is the HFA:</p> <p>c) providing funding for completed units [    ]</p> <p>d) providing funding in respect of the design and construction of the units [    ]</p> <p>If an 'x' has been inserted in option a), then for the purposes of this Agreement, the development is an <b>"Acquisition Finance Scheme"</b> and Clause 6 shall be excluded from and have no effect under this Agreement.</p> <p>If an 'x' has been inserted in option b), then for the purposes of this Agreement, the development is a <b>"Development Finance Scheme"</b>.</p> |
| C | <b>"Appointment"</b>   | means the agreement between the Developer and the Consultant for the provision of the Services dated [insert date of the appointment].   |
| D | <b>"Approved Housing Body"</b>                               | means [insert name of the AHB] with registered company number [ • ] and having its registered office at [Insert address].  |

|   |                                      |  |
|---|--------------------------------------|--|
| E | Background                           | <p>For a <b>Development Finance Scheme</b>, the following background applies:</p> <p>(D) the Approved Housing Body and the Developer have entered into the Developer and AHB Agreement for the Developer to carry out and complete the construction of the Development and for the Approved Housing Body to pay the Developer for performance of its obligations under the Developer and AHB Agreement;</p> <p>(E) the Developer has engaged the Consultant under the Appointment for the Consultant to provide the Services; and</p> <p>(F) the HFA is providing funding to the Approved Housing Body for the Development.</p> <p>For an <b>Acquisition Finance Scheme</b>, the following background applies:</p> <p>(G) the Approved Housing Body and the Developer have entered into the Developer and AHB Agreement for the sale of the Development;</p> <p>(H) the Developer has engaged the Consultant under the Appointment for the Consultant to provide the Services; and</p> <p>(I) the HFA is providing funding to the Approved Housing Body for the Development.</p> |
| F | <b>“Consultant”</b>                  | <p>means [insert legal entity name of Consultant] with registered company number [ • ] and having its registered office at [Insert Address]; or</p> <p>if the Consultant is not a registered company, please insert details:</p>   |
| G | <b>“Developer”</b>                   | <p>means [Insert legal entity name of Developer] with registered company number [ • ] and having its registered office at [Insert Address].</p>  |
| H | <b>“Developer and AHB Agreement”</b> | <p>means the agreement between the Approved Housing Body and the Developer dated [insert date of the development agreement / or contract for sale – as applicable] as more particularly described in the Background.</p>   |
| I | <b>“Development”</b>                 | <p>means [Insert description of the Development] and all ancillary and associated works and services.</p>  |
| J | <b>“Liability Cap Amount”</b>        | <p>means the “Amount” inserted in Item L (Professional Indemnity Insurance) of these Particulars.</p>  |

| L   | <b>“Professional Indemnity Insurance”</b>                   | <p>means an amount of not less than € [Insert amount of professional indemnity insurance] (the <b>“Amount”</b>) for each and every claim.</p> <p>See below guidance on the HFA requirements for professional indemnity insurance.</p> <table border="1" data-bbox="488 375 1451 829"> <thead> <tr> <th data-bbox="488 375 776 548"><b>HFA Loan Amount (for the overall Scheme)</b></th> <th data-bbox="776 375 1114 548"><b>Apartment Schemes - Minimum indemnity level required</b></th> <th data-bbox="1114 375 1451 548"><b>No – Apartment Schemes Minimum indemnity level required</b></th> </tr> </thead> <tbody> <tr> <td data-bbox="488 548 776 619">Less than €3 million</td> <td data-bbox="776 548 1114 619">€1 million each and every claim</td> <td data-bbox="1114 548 1451 619">€1 million each and every claim</td> </tr> <tr> <td data-bbox="488 619 776 690">€3 million to €5 million</td> <td data-bbox="776 619 1114 690">€3 million each and every claim</td> <td data-bbox="1114 619 1451 690">€2.5 million each and every claim</td> </tr> <tr> <td data-bbox="488 690 776 762">€5 million to €10 million</td> <td data-bbox="776 690 1114 762">€5 million each and every claim</td> <td data-bbox="1114 690 1451 762">€4 million each and every claim</td> </tr> <tr> <td data-bbox="488 762 776 829">Over €10m</td> <td data-bbox="776 762 1114 829">€6.5 million each and every claim</td> <td data-bbox="1114 762 1451 829">€6.5 million each and every claim</td> </tr> </tbody> </table> | <b>HFA Loan Amount (for the overall Scheme)</b> | <b>Apartment Schemes - Minimum indemnity level required</b> | <b>No – Apartment Schemes Minimum indemnity level required</b> | Less than €3 million | €1 million each and every claim | €1 million each and every claim | €3 million to €5 million | €3 million each and every claim | €2.5 million each and every claim | €5 million to €10 million | €5 million each and every claim | €4 million each and every claim | Over €10m | €6.5 million each and every claim | €6.5 million each and every claim |
|---|---|--|---|---|--|----------------------|---------------------------------|---------------------------------|--------------------------|---------------------------------|-----------------------------------|---------------------------|---------------------------------|---------------------------------|-----------|-----------------------------------|-----------------------------------|
| <b>HFA Loan Amount (for the overall Scheme)</b> | <b>Apartment Schemes - Minimum indemnity level required</b> | <b>No – Apartment Schemes Minimum indemnity level required</b>   |   |   |  |                      |                                 |                                 |                          |                                 |                                   |                           |                                 |                                 |           |                                   |                                   |
| Less than €3 million                            | €1 million each and every claim                             | €1 million each and every claim  |   |   |  |                      |                                 |                                 |                          |                                 |                                   |                           |                                 |                                 |           |                                   |                                   |
| €3 million to €5 million                        | €3 million each and every claim                             | €2.5 million each and every claim  |   |   |  |                      |                                 |                                 |                          |                                 |                                   |                           |                                 |                                 |           |                                   |                                   |
| €5 million to €10 million                       | €5 million each and every claim                             | €4 million each and every claim  |   |   |  |                      |                                 |                                 |                          |                                 |                                   |                           |                                 |                                 |           |                                   |                                   |
| Over €10m                                       | €6.5 million each and every claim                           | €6.5 million each and every claim  |   |   |  |                      |                                 |                                 |                          |                                 |                                   |                           |                                 |                                 |           |                                   |                                   |
| M   | <b>“Services”</b>   | means [Insert Description of the Services being provided] for the Development.   |   |   |  |                      |                                 |                                 |                          |                                 |                                   |                           |                                 |                                 |           |                                   |                                   |
| N   | <b>“Term”</b>   | <p>means:</p> <p>c) where No Apartments applies in accordance with Particular A, the period from the commencement of the provision of the Services up to and including the day that is six (6) years from completion of all of the Services; or</p> <p>d) if paragraph a) above does not apply, the period from the commencement of the provision of the Services up to and including the day that is twelve (12) years from completion of all of the Services.</p>  |   |   |  |                      |                                 |                                 |                          |                                 |                                   |                           |                                 |                                 |           |                                   |                                   |

**THIS AGREEMENT IS DATED** \_\_\_\_\_

**BETWEEN:**

- (4) the Consultant;
- (5) the Developer<sup>19</sup>; and
- (6) **HOUSING FINANCE AGENCY PUBLIC LIMITED COMPANY** with registered company number 87513 and having its principal office at 46 Saint Stephen's Green, Dublin 2, D02 WK60 (the "**HFA**").

**IT IS HEREBY AGREED** in consideration of the payment of ten euro (€10.00) by the HFA to the Consultant (receipt and sufficiency of which the Consultant acknowledges):

**1. WARRANTY AND UNDERTAKING**

1.1 The Consultant warrants and undertakes to the HFA that it has exercised and will exercise the Required Standard:

- (a) in the performance of the Services; and
- (b) not to specify for use materials or substances that are:
  - (i) not in accordance with current Irish standards, European standards and any codes of practice known or ought reasonably to have been known to the Consultant insofar as they may be applicable to the Development, or
  - (ii) known to be deleterious to health or safety, or the durability or performance of other materials or substances used in the Development.

For the purposes of this Clause 1.1, the "**Required Standard**" shall mean all the reasonable skill, care and diligence that it is reasonable for a developer to expect from a member of the consultant's profession providing services of similar nature to the Services and having regard to the nature of the Development and no contents of this Agreement amount to a guarantee by the Consultant of the suitability or purpose of the design or other Services.

1.2 The Consultant has not and shall not breach any term of the Appointment, or any duties or obligations arising under or in connection with the Appointment.

1.3 <sup>20</sup>In respect of any claim by the Beneficiary for breach of this Clause 1, the duty and/or liability (whether in duration, extent or nature) of the Consultant is to be treated as being no greater and no longer lasting than it would have been if the HFA had been named as joint client with the Developer to the Appointment and the Consultant shall be entitled in defence of any action or proceedings by the HFA for breach of this Clause 1 to rely on any limitation or exclusion in the Appointment and to raise equivalent rights in defence of liability as it would have against the Developer under the

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<sup>19</sup> Applicable for Development Finance Schemes only – can be deleted for Acquisition Finance Schemes.

<sup>20</sup> Clause 1.3 is to be included in the collateral warranty where the HFA has reviewed the terms of the underlying appointment and confirmed same are acceptable to it. In reviewing the underlying appointment, the HFA will consider (amongst other provisions) all limitations on liability and exculpatory clauses (as against the HFA liability cap included in Clause 7). Note that where a liability cap is expressed as being in the aggregate in the underlying appointment, Clause 1.3 is to be deleted and Clause 7 shall apply.

Appointment (save that the Consultant shall not be entitled to rely on any right of set-off or counterclaim).

## **2 INSURANCE**

9.1 The Consultant warrants to and undertakes to the HFA that it shall take out and maintain professional indemnity insurance in accordance with the applicable requirements in Part L of the Particulars for a period from the commencement of the Services to a date no earlier than the expiry of the Term.

9.2 The insurance required under Clause 2.1 shall be written by reputable and well-established insurers lawfully carrying on insurance business in the EU or in the United Kingdom provided it has the necessary regulatory authorisations to underwrite insurance in Ireland.

9.3 The Consultant shall notify the HFA in writing immediately on becoming aware of:

(a) the cancellation, non-renewal, or reduction in cover available to the Consultant; or

(b) the cover no longer being available to the Consultant at commercially reasonable rates,

and in any such circumstances the Consultant shall take out and maintain the best professional indemnity insurance that is available in the insurance market within the EU or United Kingdom at commercially reasonable rates until such time as the cover required by Clause 2.1 is available at commercially reasonable rates at which point the Consultant shall immediately take out and maintain such cover.

9.4 As and when reasonably requested by the HFA, the Consultant shall produce for inspection documentary evidence that the insurance required by Clause 2.1 (or Clause 2.3 as the case may be) has been taken out and is being maintained as so required.

9.5 If the Consultant shall at any time fail to take out or maintain the insurance required under Clause 2.1 or, if applicable, 2.3, the HFA may take out and maintain such insurance as the HFA may in its discretion consider reasonable to protect its interest and the Consultant shall pay to the HFA the amount of all costs and expenses properly incurred by the HFA in so doing.

9.6 The policy shall not include terms or conditions to the effect that the Consultant must discharge any liability before being able to recover from the insurers.

## **10. COPYRIGHT AND INTELLECTUAL PROPERTY**

10.1 The copyright in all designs, drawings, reports, specifications, bills of quantities, consents, papers and other similar documents produced by the Consultant in connection with any Services (the "**Documents**") shall remain vested in the Consultant but the HFA shall have a perpetual non-exclusive irrevocable and assignable royalty free licence to reproduce, copy and use the Documents for all purposes connected with the Services and to services related to future maintenance and alteration

work. The Consultant shall not be liable for use of any of the Documents for any purpose other than that for which they were prepared and/or provided.

- 10.2 The HFA shall be entitled (at its own cost) to full and proper copies of the Documents in the possession or control of the Consultant and the Consultant will not claim copyright or a lien in respect of them against the HFA.
- 10.3 The licence granted to the HFA under this Agreement shall include a right for the HFA to grant sub-licences.
- 10.4 The Consultant shall indemnify the HFA from any claims brought by a third party against the HFA for any alleged breach or infringement of any intellectual property rights:
- (a) in the Documents; or
  - (b) arising out of or in connection with the Services.

## 11. **ASSIGNMENT**

The benefit of this Agreement and/or any of the present or future rights interests and/ or benefits of the HFA hereunder may be assigned on two (2) occasions without the consent of the Consultant and thereafter with the prior written consent of the Consultant (such consent not to be unreasonably withheld or delayed) provided that no restriction whatsoever shall apply to any assignment to an affiliate of the HFA or to any assignment or charge in favour of any funder, bank or financial institution. The HFA shall give the Consultant prompt notice of any such assignment by it provided always that the giving of such notice shall not be a precondition to the effectiveness of any assignment.

## 5. **NOTICES**

Any notice provided for in accordance with this Agreement shall be deemed to be duly given if delivered by hand or sent by registered post to the party named therein at the address of such party shown in this Agreement or such other address as such party may by notice in writing nominate for the purpose of service and if sent by registered post or delivered by hand shall be deemed to have been received when delivered.

## 12. **STEP-IN<sup>21</sup>**

- 12.1 The Consultant will, if so required by notice in writing given by the HFA, accept the instruction of the HFA or the HFA's nominee to the exclusion of the Developer in respect of the carrying out and completion of any Services upon the terms and conditions of the Appointment (whereupon all the rights and obligations of the Developer under the Appointment shall thereafter be performed and exercisable by the HFA or its nominee). The Consultant shall not be in breach of the Appointment by complying with the obligations imposed on it by this Clause.
- 12.2 The Consultant will not without first giving the HFA not less than twenty one days prior notice in writing (accompanied by all of the information referred to in sub-clause 6.3 below) exercise or seek to exercise any right it may have to determine its employment under the Appointment or to treat the same as having been repudiated by the Developer or to discontinue or suspend the performance of any duties or services to be performed by the Consultant pursuant thereto. The Consultant's right to determine

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<sup>21</sup> Clause 6 is applicable for Development Finance Schemes only – the clause can be deleted for Acquisition Finance Schemes.

its employment under the Appointment, to treat the same as having been repudiated or to suspend or to discontinue performance shall cease if within twenty one days of receipt of such notice the HFA shall give notice in writing to the Consultant requiring the Consultant to accept the instruction of the HFA or its nominee to the exclusion of the Developer in respect of the carrying out and completion of the Services upon the terms and conditions of the Appointment (whereupon all the rights and obligations of the "Developer" under the Appointment shall thereafter be performed and exercisable by the HFA or its nominee).

12.3 Following a notice under sub clause 6.1 or sub-clause 6.2 (as applicable), the Consultant shall, if so required by the HFA at any time, provide the HFA with particulars in writing of the amounts paid to the Consultant under the Appointment, particulars of amounts due and unpaid to the Consultant, particulars of amounts remaining to be paid to the Consultant under the Appointment but not yet due, and any information requested by the HFA that is relevant to these amounts. All such information shall be provided within five (5) business days from the date of request.

12.4 In the event of a step-in under sub-clause 6.1 or sub-clause 6.2 (as applicable), any sums properly due and payable to the Consultant under the terms of the Appointment that are unpaid prior to the date of service of the notice by the HFA under sub-clause 6.1 or sub-clause 6.2 shall be payable by the HFA, provided always that the HFA's liability shall not exceed any amounts notified to the HFA pursuant to sub-clause 6.3.

### 13. **LIABILITY<sup>22</sup>**

13.1 Subject to Clause 7.2, the monetary amount of the Consultant's liability to the HFA under or arising out of this Agreement shall not exceed the Liability Cap Amount for each and every claim.

13.2 The limitation in Clause 7.1 shall not apply to any claim, loss, damage, cost, expense or liability relating to:

- (a) death, personal injury or illness;
- (b) fraud or fraudulent misrepresentation;
- (c) wilful default;
- (d) third party property damage; or
- (e) a claim for which the HFA is indemnified for by the Consultant in accordance with Clause 3.

### 14. **AMENDMENT OF THE APPOINTMENT**

Save for any variation to the Services as may be permitted by the Appointment, the Consultant shall not make or permit any amendment, variation, supplement and/ or novation of or to the Appointment and/ or agree to any release and/ or waiver by the Developer of any term, provision and/ or condition

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<sup>22</sup> Either:

- (i) Clause 7 applies, and Clause 1.3 is removed from and has no effect under this Agreement; or
- (ii) Clause 1.3 applies and Clause 7 and Particular J are to be removed and replaced with '*not used*'.

If neither Clause 1.3 or Clause 7 is removed, Clause 7 is deemed to apply and Clause 1.3 is hereby removed from, and will have no effect under, this Agreement.

of the Appointment without the prior written consent of the HFA (such consent not to be unreasonably withheld).

15. **GOVERNING LAW AND JURISDICTION**

This Agreement shall be governed by, and construed in accordance with, the laws of Ireland and the parties irrevocably submit to the jurisdiction of the Irish Courts.

16. **COUNTERPARTS**

This Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

**IN WITNESS WHEREOF** the parties have affixed their Seals the day and date first hereinbefore written.

**GIVEN** under the **COMMON SEAL** of **THE CONSULTANT**

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director/Secretary

**GIVEN** under the **COMMON SEAL**  
of **THE DEVELOPER**<sup>23</sup>:

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director/Secretary

\_\_\_\_\_  
<sup>23</sup> Applicable for Development Finance Schemes only – can be deleted for Acquisition Finance Schemes.  
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**GIVEN** under the **COMMON**  
**SEAL** of **THE HOUSING FINANCE**  
**AGENCY PLC:**

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Authorised Signatory

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Authorised Signatory  
/Company Secretary

**Appendix 13**

Form of Sub-Contractor Collateral Warranty



**HFA** An Ghníomhaireacht  
Airgeadais Tithíochta  
Housing Finance Agency

**SUB- CONTRACTOR'S COLLATERAL WARRANTY**

**[SUB-CONTRACTOR]**

and

**[CONTRACTOR<sup>24</sup>]**

and

**HOUSING FINANCE AGENCY PUBLIC LIMITED COMPANY**

relating to

**[[ insert number of units ] units at [ insert name of Development ]]**

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<sup>24</sup> Contractor only a party for Development Finance Schemes.  
12117569.14

**PARTICULARS**

|    |  |  |
|----|--|--|
| A. | Type of finance being provided by the Housing Finance Agency (“HFA”) | <p>Please select with an ‘x’ the box next to the applicable option below:</p> <p>The HFA is:</p> <p>a) providing funding for completed units <input type="checkbox"/></p> <p>b) providing funding in respect of the design and construction of the units <input type="checkbox"/></p> <p>If an ‘x’ has been inserted in option a), for the purposes of this Agreement, the development is an “<b>Acquisition Finance Scheme</b>” and Clause 6 shall be excluded from and have no effect under this Agreement.</p> <p>If an ‘x’ has been inserted in option b) then for the purposes of this Agreement, the development is a “<b>Development Finance Scheme</b>”.</p> |
| B. | “Approved Housing Body”  | means <input type="text"/> with registered company number <input type="text"/> and having its registered office at <input type="text"/> .  |

|    |              |  |
|----|--------------|--|
| C. | Background   | <p>For a <b>Development Finance Scheme</b>, the following background applies:</p> <p>(A) the Approved Housing Body and the Developer have entered into the Developer and AHB Agreement for the Developer to carry out and complete the construction of the Development and for the Approved Housing Body to pay the Developer for performance of its obligations under the Developer and AHB Agreement;</p> <p>(B) the Developer has engaged the Contractor under the Main Contract for the Contractor to provide the Works;</p> <p>(C) pursuant to the Sub-Contract, the Contractor has engaged the Sub-Contractor to carry out the Sub-Contract Works, which form part of the Works; and</p> <p>(D) the HFA is providing funding to the Approved Housing Body for the Development.</p> <p>For an <b>Acquisition Finance Scheme</b>, the following background applies:</p> <p>(E) the Approved Housing Body and the Developer have entered into the Developer and AHB Agreement for the sale of the Development;</p> <p>(F) the Developer has engaged the Contractor under the Main Contract for the Contractor to provide the Works; and</p> <p>(G) pursuant to the Sub-Contract, the Contractor has engaged the Sub-Contractor to carry out the Sub-Contract Works, which form part of the Works; and</p> <p>(H) the HFA is providing funding to the Approved Housing Body for the Development.</p> |
| D. | "Contractor" | <p>means [insert legal entity name of Contractor] with registered company number [ • ] and having its registered office at [insert address]; or</p> <p>if the Contractor is not a registered company, please insert details:</p>   |

|    |                               |  |
|----|-------------------------------|--|
| E. | Design                        | <p>Please select with an 'x' the box next to the applicable option below:</p> <p>The Sub-Contractor is:</p> <p>a) carrying out design in relation to the Works <input type="checkbox"/></p> <p>b) not carrying out design in relation to the Works <input type="checkbox"/></p> <p>If an 'x' has been inserted in option a) then for the purposes of this Agreement, the Sub-Contractor is required to maintain the Professional Indemnity Insurance below in Particular L and Clause 2 shall apply.</p> <p>If an 'x' has been inserted in option b), for the purposes of this Agreement, the Sub-Contractor is not required to maintain the Professional Indemnity Insurance below in Particular L. Clause 2 is hereby removed from and will have no effect under this Agreement.</p> |
| F. | "Developer"                   | <p>means [insert legal entity name of Developer] with registered company number [ • ] and having its registered office at [insert address].</p> <p>if the Developer is not a registered company, please insert details:</p>  |
| G. | "Developer and AHB Agreement" | <p>means the agreement between the Approved Housing Body and the Developer dated [insert date of the development agreement / or contract for sale – as applicable] as more particularly described in the Background.</p>   |
| H. | "Development"                 | <p>means [insert description of the Development] and all ancillary and associated works and services.</p>  |
| I. | Law                           | <p>means any law applicable in Ireland (without further enactment), common law, civil code, statute, statutory instrument, proclamation, byelaw, directive, decision, regulation, rule, order, notice, code of practice, code of conduct, rule of court, instruments, or delegated or subordinate legislation.</p>   |
| J. | "Main Contract"               | <p>means the agreement between the Developer and the Contractor for the carrying out and construction of the Works dated [insert date of the Main Contract].</p>   |

| K.                                       | “Practical Completion”  | <p>means:</p> <p>a) for Acquisition Finance Schemes, the date of completion of the sale under the Developer and AHB Agreement; or</p> <p>b) for Development Finance Schemes, the date of practical completion or equivalent under the Developer and AHB Agreement.</p>  |  |   |   |                      |                                 |                                 |                          |                                 |                                   |                           |                                 |                                 |                  |                                   |                                   |
|--|---|---|--|---|---|----------------------|---------------------------------|---------------------------------|--------------------------|---------------------------------|-----------------------------------|---------------------------|---------------------------------|---------------------------------|------------------|-----------------------------------|-----------------------------------|
| L.                                       | “Professional Indemnity Insurance “                               | <p>Means an amount of not less than € [ insert amount of professional indemnity insurance ] for each and every claim.</p> <p>See below guidance on the HFA requirements for professional indemnity insurance.</p> <table border="1" data-bbox="496 709 1458 1192"> <thead> <tr> <th data-bbox="496 709 782 915">HFA Loan Amount (for the overall Scheme)</th> <th data-bbox="782 709 1122 915">Schemes that include apartments- Minimum indemnity level required</th> <th data-bbox="1122 709 1458 915">Schemes that do not include any apartments - Minimum indemnity level required</th> </tr> </thead> <tbody> <tr> <td data-bbox="496 915 782 982">Less than €3 million</td> <td data-bbox="782 915 1122 982">€1 million each and every claim</td> <td data-bbox="1122 915 1458 982">€1 million each and every claim</td> </tr> <tr> <td data-bbox="496 982 782 1052">€3 million to €5 million</td> <td data-bbox="782 982 1122 1052">€3 million each and every claim</td> <td data-bbox="1122 982 1458 1052">€2.5 million each and every claim</td> </tr> <tr> <td data-bbox="496 1052 782 1121">€5 million to €10 million</td> <td data-bbox="782 1052 1122 1121">€5 million each and every claim</td> <td data-bbox="1122 1052 1458 1121">€4 million each and every claim</td> </tr> <tr> <td data-bbox="496 1121 782 1192">Over €10 million</td> <td data-bbox="782 1121 1122 1192">€6.5 million each and every claim</td> <td data-bbox="1122 1121 1458 1192">€6.5 million each and every claim</td> </tr> </tbody> </table> | HFA Loan Amount (for the overall Scheme) | Schemes that include apartments- Minimum indemnity level required | Schemes that do not include any apartments - Minimum indemnity level required | Less than €3 million | €1 million each and every claim | €1 million each and every claim | €3 million to €5 million | €3 million each and every claim | €2.5 million each and every claim | €5 million to €10 million | €5 million each and every claim | €4 million each and every claim | Over €10 million | €6.5 million each and every claim | €6.5 million each and every claim |
| HFA Loan Amount (for the overall Scheme) | Schemes that include apartments- Minimum indemnity level required | Schemes that do not include any apartments - Minimum indemnity level required   |  |   |   |                      |                                 |                                 |                          |                                 |                                   |                           |                                 |                                 |                  |                                   |                                   |
| Less than €3 million                     | €1 million each and every claim                                   | €1 million each and every claim   |  |   |   |                      |                                 |                                 |                          |                                 |                                   |                           |                                 |                                 |                  |                                   |                                   |
| €3 million to €5 million                 | €3 million each and every claim                                   | €2.5 million each and every claim   |  |   |   |                      |                                 |                                 |                          |                                 |                                   |                           |                                 |                                 |                  |                                   |                                   |
| €5 million to €10 million                | €5 million each and every claim                                   | €4 million each and every claim   |  |   |   |                      |                                 |                                 |                          |                                 |                                   |                           |                                 |                                 |                  |                                   |                                   |
| Over €10 million                         | €6.5 million each and every claim                                 | €6.5 million each and every claim   |  |   |   |                      |                                 |                                 |                          |                                 |                                   |                           |                                 |                                 |                  |                                   |                                   |
| M.                                       | “Sub-Contract”  | <p>means the sub-contract dated [ • ] made between the Sub-Contractor and the Contractor (appended at Schedule 1 hereto) in respect of the Sub-Contract Works.</p>  |  |   |   |                      |                                 |                                 |                          |                                 |                                   |                           |                                 |                                 |                  |                                   |                                   |
| N.                                       | “Sub-Contractor”  | <p>means [insert legal entity name of Sub-Contractor] with registered company number [ • ] and having its registered office at [insert registered address]; or</p> <p>if the Sub-Contractor is not a registered company, please insert details:</p>   |  |   |   |                      |                                 |                                 |                          |                                 |                                   |                           |                                 |                                 |                  |                                   |                                   |
| O.                                       | “Sub-Contract Works”  | <p>means the provision of [insert description of the sub-contract works] in relation to the Development.</p>  |  |   |   |                      |                                 |                                 |                          |                                 |                                   |                           |                                 |                                 |                  |                                   |                                   |

|    |                |   |
|----|----------------|---|
| P. | <b>“Term”</b>  | <p>means:</p> <ul style="list-style-type: none"> <li>e) where the Works relate to apartments, the period from the commencement of the Works up to and including the day that is twelve (12) years from Practical Completion; or</li> <li>f) if paragraph a) above does not apply, the period from the commencement of the Works up to and including the day that is six (6) years from Practical Completion.</li> </ul> |
| Q. | <b>“Works”</b> | means [insert description of the Works] for the Development.  |

**THIS AGREEMENT IS DATED** \_\_\_\_\_

**BETWEEN:-**

- (7) the Sub-Contractor;
- (8) the Contractor<sup>25</sup>; and
- (9) **HOUSING FINANCE AGENCY PUBLIC LIMITED COMPANY** with registered company number 87513 and having its principal office at 46 Saint Stephen's Green, Dublin 2, D02 WK60 (the "**HFA**")

**IT IS HEREBY AGREED** in consideration of the payment of ten euro (€10.00) by the HFA to the Sub-Contractor (receipt and sufficiency of which the Sub-Contractor acknowledges):-

(10) **COMPLY WITH SUB-CONTRACT**

10.1 The Sub-Contractor hereby warrants to and undertakes with the HFA that:

- (a) it has exercised and will continue to exercise all reasonable skill, care and diligence in the performance of its obligations and duties pursuant to the Sub-Contract and has not broken and shall not break any express or implied term of the Sub-Contract;
- (b) in the performance of the Sub-Contract Works and in carrying out the Sub-Contract, it has used good and proper materials and the workmanship has been carried out in compliance with Law, and
- (c) it binds itself to the HFA in all respects as if the HFA had appointed the Sub-Contractor to act prior to the commencement of any work by the Sub-Contractor to the extent that the HFA shall be entitled to enforce all remedies against the Sub-Contractor by virtue of any breach by the Sub-Contractor of its obligations pursuant to the Sub-Contract.

10.2 The Sub-Contractor hereby undertakes and warrants to the HFA that it has not and will not use materials or substances:

- (a) which are not in accordance with current Irish standards, European standards and any codes of practice known or ought reasonably to have been known to the Sub-Contractor insofar as they may be applicable, or
- (b) known to be deleterious to health or safety or the durability or suitability of any such project in the particular circumstances in which same is used.

(11) **INSURANCE**

11.1 The Sub-Contractor warrants to and undertakes with the HFA that it shall take out and maintain professional indemnity insurance in accordance with the applicable requirements in Part L of the Particulars for a period from the commencement of the Sub-Contract Works to a date no earlier than the expiry of the Term.

11.2 The insurance required under Clause 2.1 shall be written by reputable and well-established insurers lawfully carrying on insurance business in the EU or in the United Kingdom provided it has the necessary regulatory authorisations to underwrite insurance in Ireland.

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<sup>25</sup> Applicable for Development Finance Schemes only – can be deleted for Acquisition Finance Schemes.  
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- 11.3 The Sub-Contractor shall notify the HFA in writing immediately on becoming aware of:
- (a) the cancellation, non-renewal, or reduction in cover available to the Sub-Contractor; or
  - (b) the cover no longer being available to the Sub-Contractor at commercially reasonable rates,
- and in any such circumstances the Sub-Contractor shall take out and maintain the best professional indemnity insurance that is available in the insurance market within the EU or United Kingdom at commercially reasonable rates until such time as the cover required by Clause 2.1 is available at commercially reasonable rates at which point the Sub-Contractor shall immediately take out and maintain such cover.
- 11.4 As and when reasonably requested by the HFA, the Sub-Contractor shall produce for inspection documentary evidence that the insurance required by Clause 2.1 has been taken out and is being maintained as so required.
- 11.5 If the Sub-Contractor shall at any time fail to take out or maintain the insurance required under Clause 2.1 or, if applicable, 2.3, the HFA may take out and maintain such insurance as the HFA may in its discretion consider reasonable to protect its interest and the Sub-Contractor shall pay to the HFA the amount of all costs and expenses properly incurred by the HFA in so doing.
- 11.6 The policy shall not include terms or conditions to the effect that the Sub-Contractor must discharge any liability before being able to recover from the insurers.

(12) **COPYRIGHT AND INTELLECTUAL PROPERTY**

- 12.1 The copyright in all designs, drawings, reports, specifications, bills of quantities, consents, papers and other similar documents produced by the Sub-Contractor in connection with the Sub-Contract Works (the “**Documents**”) shall remain vested in the Sub-Contractor but the HFA shall have a perpetual non-exclusive irrevocable and assignable royalty free licence to reproduce, copy and use the Documents for all purposes connected with the Sub-Contract Works and to any works related to future maintenance and alteration work. The Sub-Contractor shall not be liable for the use of any of the Documents for any purpose other than that for which they were prepared and/or provided.
- 12.2 The HFA shall be entitled (at its own cost) to full and proper copies of the Documents in the possession or control of the Sub-Contractor and the Sub-Contractor will not claim copyright or a lien in respect of them against the HFA.
- 12.3 The licence granted to the HFA under this Agreement shall include a right for the HFA to grant sub-licences.
- 12.4 The Sub-Contractor shall indemnify the HFA from any claims brought by a third party against the HFA for any alleged breach or infringement of any intellectual property rights in the Documents or arising out of or in connection with the Sub-Contract Works.

(13) **ASSIGNMENT**

The benefit of this Agreement and/or any of the present or future rights interests and benefits of the HFA hereunder may be assigned on two (2) occasions without the consent of the Sub-Contractor and thereafter with the prior written consent of the Sub-Contractor (such consent not to be unreasonably withheld or delayed) provided that no restriction whatsoever shall apply to any assignment to an affiliate of the HFA or to any assignment or charge in favour of any funder, bank or financial institution.

The HFA shall give the Sub-Contractor prompt notice of any such assignment by it provided always that the giving of such notice shall not be a precondition to the effectiveness of any assignment.

(14) **NOTICES**

Any notice provided for in accordance with this Agreement shall be deemed to be duly given if delivered by hand or sent by registered post to the party named therein at the address of such party shown in this Agreement or such other address as such party may by notice in writing nominate for the purpose of service and if sent by registered post or delivered by hand shall be deemed to have been received when delivered.

(15) **STEP-IN**

**15.1** The Sub-Contractor will, if so required by notice in writing given by the HFA, accept the instruction of the HFA or the HFA's nominee to the exclusion of the Contractor in respect of the carrying out and completion of any Sub-Contract Works upon the terms and conditions of the Sub-Contract (whereupon all the rights and obligations of the Contractor under the Sub-Contract shall thereafter be performed and exercisable by the HFA or its nominee). The Sub-Contractor shall not be in breach of the Sub-Contract by complying with the obligations imposed on it by this Clause.

**15.2** The Sub-Contractor will not without first giving the HFA not less than twenty one days prior notice in writing (accompanied by all of the information referred to in sub-clause 6.3 below) exercise any right it may have to determine its employment under the Sub-Contract or to treat the same as having been repudiated by the Contractor or to discontinue or suspend the performance of any duties to be performed by the Sub-Contractor pursuant thereto. The Sub-Contractor's right to determine its employment under the Sub-Contract, to treat the same as having been repudiated or to suspend or to discontinue performance shall cease if within twenty one days of receipt of such notice the HFA shall give notice in writing to the Sub-Contractor requiring the Sub-Contractor to accept the instruction of the HFA or its nominee to the exclusion of the Contractor in respect of the carrying out and completion of the Sub-Contract Works upon the terms and conditions of the Sub-Contract (whereupon all the rights and obligations of the "Contractor" under the Sub-Contract shall thereafter be performed and exercisable by the HFA or its nominee).

**15.3** Following a notice under sub clause 6.1 or sub-clause 6.2 (as applicable), the Sub-Contractor shall, if so required by the HFA at any time, provide the HFA with particulars in writing of the amounts paid to the Sub-Contractor under the Sub-Contract, particulars of amounts due and unpaid to the Sub-Contractor, particulars of amounts remaining to be paid to the Sub-Contractor under the Sub-Contract but not yet due, and any information requested by the HFA that is relevant to these amounts. All such information shall be provided within five (5) business days from the date of request.

**15.4** In the event of a step-in under sub-clause 6.1 or sub-clause 6.2 (as applicable), any sums properly due and payable to the Sub-Contractor under the terms of the Sub-Contract that are unpaid prior to the date of service of the notice by the HFA under sub-clause 6.1 or sub-clause 6.2 shall be payable by the HFA, provided always that the HFA's liability shall not exceed any amounts notified to the HFA pursuant to sub-clause 6.3.

(16) **GOVERNING LAW AND JURISDICTION**

This Agreement shall be governed by and construed in accordance with the laws of Ireland and the parties irrevocably submit to the jurisdiction of the Irish Courts.

(17) **COUNTERPARTS**

This Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

**IN WITNESS WHEREOF** the parties have affixed their Seals the day and date first hereinbefore written.

**GIVEN** under the **COMMON SEAL**  
of **THE SUB-CONTRACTOR:**

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director/Secretary

**GIVEN** under the **COMMON SEAL**  
of **THE CONTRACTOR**<sup>26</sup>:

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director/Secretary

\_\_\_\_\_  
<sup>26</sup> Applicable for Development Finance Schemes only – can be deleted for Acquisition Finance Schemes.  
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**GIVEN** under the **COMMON SEAL**  
of **THE HOUSING FINANCE AGENCY PLC:**

\_\_\_\_\_  
Authorised Signatory

\_\_\_\_\_  
Authorised Signatory /Company Secretary

**SCHEDULE 1**  
**SUB-CONTRACT AGREEMENT**

## Appendix 14

LDI Policy

**Appendix 15**

Form of Design Team Appointment

## Appendix 16

Forms of certificate of compliance from the Construction Contractor that the Works have been constructed in compliance with Requisite Consents, Building Control Act and the Building Regulations

### Part 1

#### Contractor's Certificate of Compliance

WORKS: [ ]

EMPLOYER: [ ]

DEVELOPER: [ ]

CONTRACTOR: [ ]

MAIN CONTRACT: Contract for [ ] entered into between the Employer and the Developer dated [ ] 20 .

WORKS: [ ] and all ancillary and associated services at [ ] ("the Works").

By a building agreement made on [●] (the "**Works Contract**") between:

(1) [ ] (the "**Developer**"); which expression includes its successors and assigns;

(2) [●] (the "**Developer's Contractor**"); which expression includes its successors and assigns;

and (herein collectively the "parties" or individually a "**party**")

We, [●] certify that the Construction of the above Works;

- (a) which we have fully supervised, are in accordance with good building practice and in Substantial Compliance with the Contract Drawings and Specifications (both as defined in the Contract); and
- (b) are in Substantial Compliance with the Building Control Act, the Building Regulations and Relevant Consents (as defined in the Contract).

#### **Definitions**

"**Building Control Act**" means the Building Control Act 1990 and 2007 and any statutory modification or re-enactment thereof current at the date of the issue of the Commencement Notice in respect of the Works.

"**Building Regulations**", Regulations made under the Building Control Act.

"**Substantial Compliance**" when applied to Construction, means that such construction of the Works is in accordance with the Building Regulations, saving and excepting such deviations as would not in our opinion warrant the issue of enforcement proceedings as provided for in the Building Control Act.

SIGNED this [ ] day of [ ] 20

\_\_\_\_\_ Director

**Part 1**

**Contractor's Interim Certificate of Compliance**

## Appendix 17

Form of wording to be included in contracts with Sub-Contractors to ensure Ancillary Certificates will be provided to the Assigned Certifier.

### **Building Control Regulations – Sub-Contractor compliance requirements**

1. Having regard to the Code of Practice, the Sub-Contractor undertakes to cooperate with the inspections set out in the Inspection Plan and the Inspection Notification Framework and to certify that the Sub-Contract Works are in compliance with the requirements of the Second Schedule to the Building Regulations insofar as they apply to the Sub-Contract Works.
2. The Sub-Contractor undertakes to provide the Assigned Certifier with such Ancillary Certificates as may be required and, upon [ ], furnish to the Contractor an Ancillary Certificate of Compliance on Completion in the form of the specimen attached, or such other form as may be reasonably be required by the Developer's Contractor.
3. The Sub-Contractor warrants, represents and undertakes to the Developer's Contractor that it:
  - (i) is a competent person to perform the Sub-Contract Works;
  - (ii) will ensure that any persons employed or engaged by it to undertake any of the Sub-Contract Works will be competent to undertake such works;
  - (iii) in the performance of its obligations under the Sub-Contract, the Building Regulations, has and will, for the duration of the Sub-Contract Works, exercise all the reasonable skill and care to be expected of a properly qualified competent person experienced in carrying out the functions of a Sub-Contractor on projects similar to the Sub-Contract Works.
4. The Sub-Contractor undertakes to construct (and design, where that role is included in the Sub-Contract) the Sub-Contract Works in accordance with plans, calculations, specifications, ancillary certificate and particulars issued to it relevant to the Sub-Contract Works and such other documents relevant to compliance with the requirements of the Second Schedule to the Building Regulations as shall be retained by it as outlined in the Code of Practice.

**Appendix 18**

Form of Site Licence

**Appendix 19**  
DCC Consideration

**Appendix 20**  
Variation Management Procedure

1. Where the Developer receives a written notice from DCC of a Variation, the Developer shall, within twenty (20) Working Days of receiving the notice, furnish to DCC a detailed cost estimate of the full cost including VAT, the costs of any delay and/or disruption and any extension of time required in order to carry out any such Variation. Such estimate shall show the Construction Contractor's cost of complying with such Variation and the consultants' costs which the Developer may directly incur arising out of or by reason of such Variation (but excluding any sum by way of interest or finance charges, however described). The Developer shall also provide with his estimate (and procure from the Construction Contractor) such other information as DCC may reasonably require to evaluate such estimate. The "consultants' costs" shall be fixed fees and consistent with the Design Team Appointments.
2. Within ten (10) Working Days of receipt of the foregoing details from the Developer, DCC shall indicate to the Developer in writing whether or not DCC wishes to proceed with the proposed Variation and, in circumstances where notice is given that DCC wishes to proceed, the Developer shall perform and carry out or procure the performance and carrying out of the Variation on the basis of the cost and any extension of time agreed and Term shall be adjusted accordingly PROVIDED ALWAYS that prior to the carrying out of a Variation, any drawings, plans, specifications or other documents produced by the Developer for the Variation shall be approved in writing by DCC. DCC shall notify in writing the Developer of its approval or disapproval of the drawings, plans or specifications within a reasonable time and in any event within a period not more than ten (10) Working Days from receipt of same. Such drawings shall, upon approval by DCC, be deemed to be part of the Plans. However no such approval by DCC shall relieve or reduce the Developer's obligations to design and construct properly the said Variation.
3. If DCC does not consider that the cost estimate or any time extensions required are reasonable and the parties are unable to reach agreement, DCC shall nevertheless be entitled to instruct the Developer in writing to undertake the carrying out of the Variation subject to the Developer's right to be compensated for the Variation and to receive a reasonable extension of time.
4. DCC may instruct, by way of Variation, the Developer to omit or reduce any part of the Residential Units Works subject to such omission not compromising the Requisite Consents. Where such an omission to the Residential Units Works is instructed, the DCC Consideration shall be reduced to reflect the value of the omitted works. The Developer shall not be entitled to recover any profit or loss in respect of such omitted works and the Developer hereby waives any such claim against DCC.
5. In the event that the Parties are unable to agree on the estimate of the value of the Variation DCC shall proceed to determine the Developer's entitlements on the basis of a fair valuation, having due regard to the Construction Contractor's rates in the Building Contract and the fees payable to the consultants.
6. The Developer shall be entitled, subject to his strict compliance with clause 27 of the Agreement and the claim notification requirements therein, to an extension to the Term if and to the extent that completion of the Works is or will be delayed by a Variation.
7. Unless agreed otherwise by the Parties, payment for the Variation shall be made by DCC in accordance with the provisions of clause 8 of the Agreement.